

---

**WOLLONGONG LOCAL ENVIRONMENTAL PLAN (LEP) 2009**  
**CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS**

---

**APPLICANT'S NAME:** Triple One Crown Pty Ltd

**SITE ADDRESS:** Nos. 111-119 Crown Street, Wollongong

**PROPOSAL:** Demolition of existing structures and construction of a 12 storey commercial building above basement car parking



**1. (i) Name of the applicable planning instrument which specifies the development standard:**

Wollongong Local Environmental Plan (LEP) 2009

**(ii) The land is zoned:**

B3 Commercial Core

**(iii) The number of the relevant clause therein:**

Clause 8.6 – Building separation within Zone B3 Commercial Core

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

**2. Context**

The subject site is located within the Wollongong Central Business District (CBD), at the eastern gateway to the pedestrianised Crown Street Mall (see Figure 1 on the following page). The proximity to the Wollongong town centre, railway station and major roads has led to the precinct being earmarked for urban renewal.

The relevant planning controls support an emerging high rise commercial character to replace the ageing and inconsistent existing mixed-use development. Examples of the contemporary high density infill development include the new IMB Bank building under construction at No. 47 Burelli Street and a seven storey building at Nos. 71-77 Crown Street (see Photograph 1 on the following page). Both of these developments do not meet the required building separation distance.

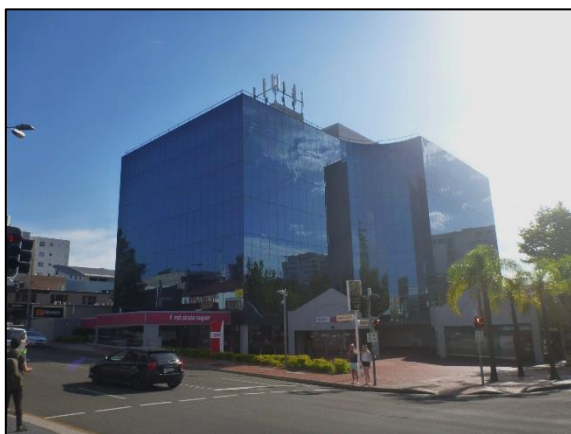
The majority of existing development along Crown Street does not extend higher than the street frontage height and therefore few buildings have been subject to the upper level building separation controls in accordance with Clause 8.6 of the LEP. However, there are several locations along the Crown Street where buildings are separated at ground level and are inconsistent with the development standard. This includes the informal laneway along the western boundary of the subject site known as Lois Lane (see Photograph 2 on the following page). The proposal will retain and formalise the existing laneway, creating a natural separation with development to the west.

The area is in a state of transition and the scale and context of nearby developments have been considered in the proposed building design. In particular, the development has been designed to match

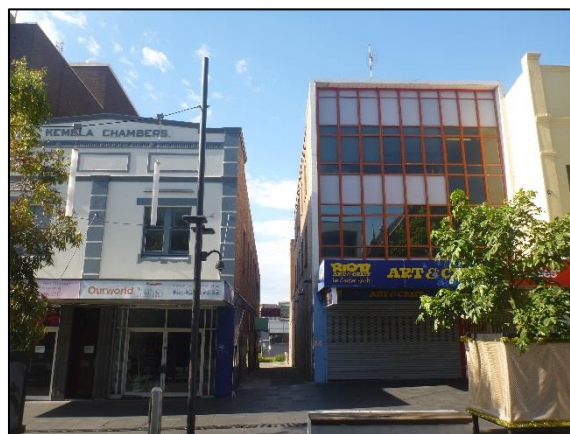
the scale and articulation of the adjoining Lang's Corner building (DA-2017/493) which is currently under construction (see Figure 2 on the following page).

The proposed 12 storey contemporary commercial building will have a scale and form that is compatible with Council's height controls as well as other high density developments nearby. Accordingly the proposal is compatible with existing developments in the locality, responds to the emerging character along Crown Street Mall and will achieve better outcomes for the site.

By way of background, the proposal is to demolish the existing 2 and 4 storey buildings and construct a 12 storey commercial building containing office space above retail. The proposed building will include 3 basement parking levels and a lower ground floor collectively containing 171 car spaces.



**Photograph 1:** Nos. 71-77 Crown Street



**Photograph 2:** Existing street frontage building separation at Nos. 115-119 & No. 121 Crown Street



**Figure 1: Site Plan**  
Source: SIX Maps

 Subject Site



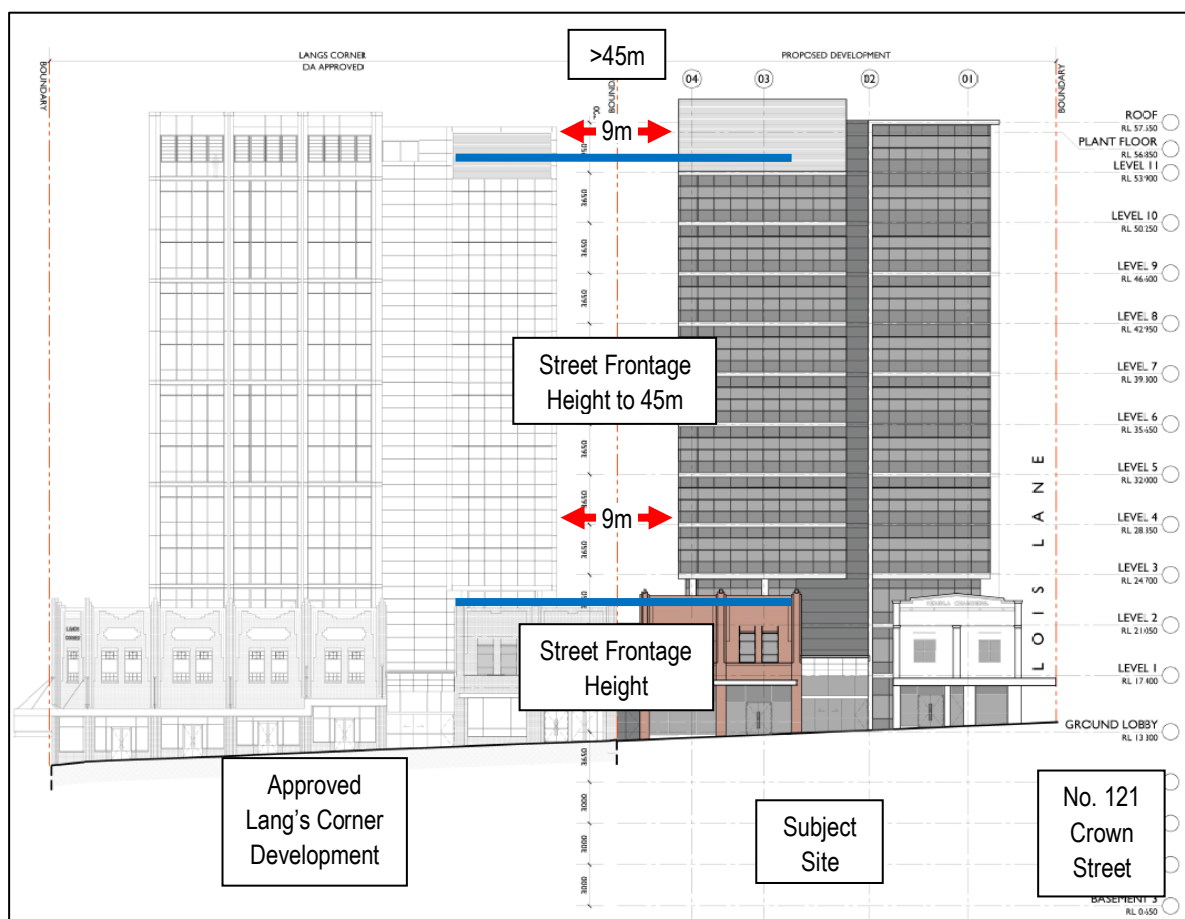
**Figure 2: Photomontage of Approved Development at Lang's Corner, Behind the Subject Site**

**3. Specify the nature of Development Standard sought to be varied and details of variation:**

The applicant seeks to vary Clause 8.6 in the Wollongong LEP which is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act). Clause 8.6(2) identifies minimum building separation distances based on building height. This Clause states:

- (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 building above the street frontage height and less than 45m 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.*

Street frontage height is defined as the height of that part of a building that is built to the street alignment. In this case, the street frontage height is determined by the adjoining Lang's Corner development as two storeys (see Figure 3 on the following page). The proposal complies with Clause 8.6(a), providing no building separation at the street level, other than retaining the existing Lois Lane.



**Figure 3: Northern Elevation Showing Building Separation**

Source: ADM Architects

To the east, the proposal provides a 9m building separation with the approved Lang's Corner development above street frontage height. This falls short of the 12m development standard under Clause 8.6(2)(b) and the 28m control above 45m under Clause 8.6(2)(c). However, the proposal provides a 4.5m side setback which matches the Lang's Corner building. This has been increased from a zero setback in response to the feedback of Council's Design Review Panel (DRP).

To the west, the proposal includes a podium level with zero setbacks to the laneway up to the street frontage height in accordance with Clause 8.6(2)(a). The proposal also complies with the Clauses (b) and (c) as there is no adjoining building above the street frontage height. The neighbouring No. 121 Crown Street is only three storeys high. This Clause 4.6 is largely on the basis of the potential development of the neighbouring property, adopting a precautionary approach where the building separation distance is shared between the two sites. This approach is also reflected in Part 2.5.3 of Chapter D13 – Wollongong City Centre Precinct of the Wollongong Development Control Plan (DCP) 2009.

#### 4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC118 (*Initial Action*), Preston CJ notes at [87,90]:

*Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.*

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

The proposal seeks flexibility in the application of the building separation development standard to the development in the circumstance of this particular case. The proposal will be rationalised with the approved development at Nos. 95-109 Crown Street which provides the opportunity to reduce building separation without resulting in significant amenity or privacy impacts. This has been achieved through specifically siting the proposed access and amenity cores opposite one another in the two buildings. The proposed building separation allows the site potential to be maximised, which is necessary to attract Government and other high profile tenants who would contribute to the renewal of the area. A non-compliance with the building separation control is considered a preferable design solution than additional height, which would significantly increase overshadowing. Accordingly, the non-compliances will provide for better outcomes both for and from the development.

## 5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause is stated, inter alia:

- (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.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

### 5.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

*These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

It is our opinion that the proposal satisfies a number of the five tests established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant tests will be considered below.

**Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;**

It is noted that under Clause 4.6(4)(a)ii, 'achieved' has been replaced by the lesser test of 'consistent'. Despite the non-compliance, the proposal is consistent with the desired high density character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. The proposal is consistent with the sole objective of the building separation standard which states:

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

The three aspects of the Objective will now be discussed individually.

**Visual Appearance**

Regardless of the proposed building separation non-compliance, the proposal will make a positive contribution to the streetscape by providing a contemporary infill development which is consistent with Council's desired future character. The proposal has incorporated a number of design features suggested by Council at the DRP and pre-DA meetings. This includes articulating the façade to give the appearance of separate built forms. The tower element will be stepped back from the street frontage height and a clear separation with the approved Lang's Corner development will be maintained.

In addition, the Kembla Chambers façade will be reconstructed and the panel typology will be extended along the length of Crown Street up to the street frontage height. This will create a natural variation in textures and contrast with the contemporary tower element behind to create visual interest at the human scale.

**Privacy**

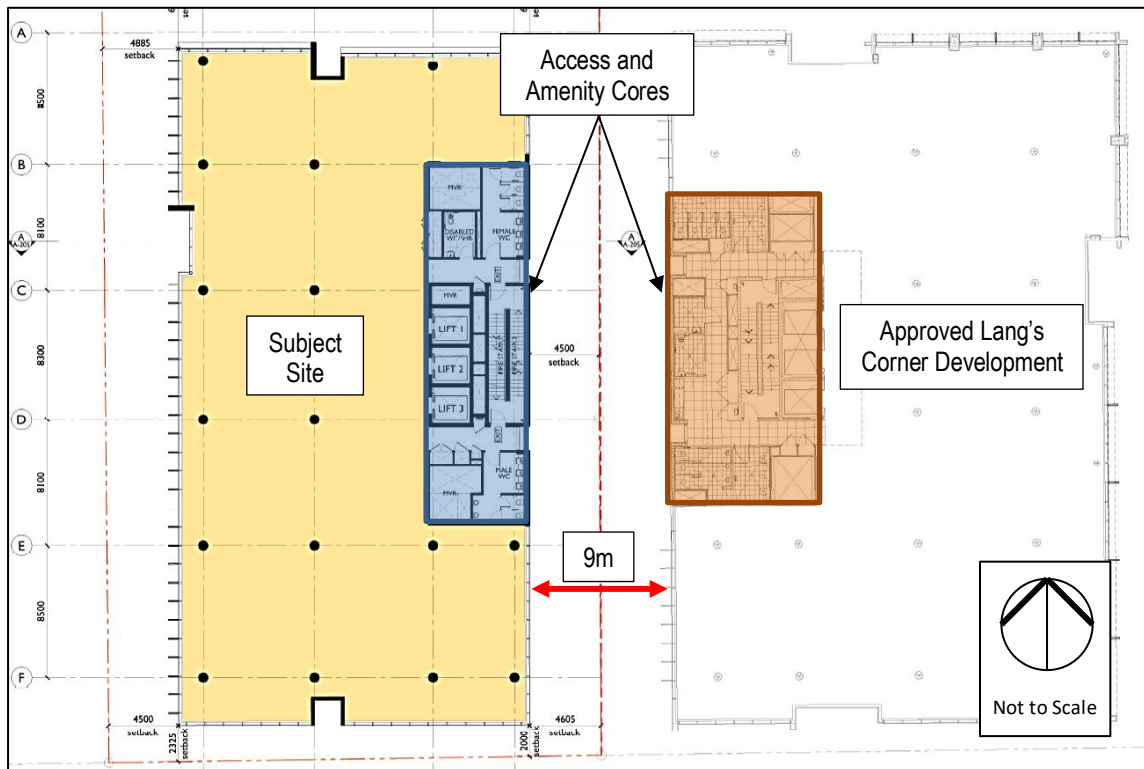
The proposal will maintain privacy for adjoining sites to the east and west. To the east, the majority of the non-compliant elevation comprises an amenity and access block on each level, which will restrict aural and visual privacy impacts. This service block will match the access core of the approved Lang's Corner development which also only has limited windows (see Figure 4 on the following page).

To the west, the existing Lois Lane will be formalised and provides natural building separation. The neighbouring building at No. 121 Crown Street is only three storeys and contains only limited fenestration along its side boundary. No. 121 contains a commercial use which is less sensitive than residential uses. If No. 121 were to be redeveloped, the minimum 4.5m setback would provide reasonable privacy in a constrained CBD environment.

Accordingly, the areas of non-compliance with the building separation standard are unlikely to have adverse impacts on privacy. In any event, privacy is less important for commercial uses.

### Solar Access

To assess any overshadowing implications of the proposal, shadow diagrams have been prepared for 9am to 3pm on the winter solstice (June 21), summer solstice (December 21) and the equinox. Some overshadowing impacts are inevitable given Council's desire for greater density on the site. The proposed building separation non-compliances will not result in significant additional overshadowing. Comparison models of a compliant built form against the proposal are provided in the revised architectural drawings and show any additional impacts will be minor. Importantly, the proposed development will not impact any sites identified on the Solar Protection Map.



Source: ADM Architects

**Figure 4: Levels 3-10 Floor Plan Showing Location of Service Block**

Accordingly, in our opinion, the proposal is consistent with the sole objective of the development standard and provides a quality visual outcome while maximising the privacy and solar access of surrounding sites.

### **Test 2 - the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;**

The underlying purpose of the standard is to maintain privacy and amenity for high density developments within the Wollongong CBD. This purpose is not as relevant in this case as the development is able to integrate with the adjoining Lang's Corner development that is currently under construction. By reflecting the design and articulation of the Lang's Corner development, the proposed design is able to locate the service core along the same part of the shared boundary. The underlying concerns of the development standard for privacy and amenity are not relevant to the service cores as these areas form transient spaces and only include limited openings.

The development standard is also less relevant along the other elevations as the development adjoins the public domain to the front and rear, and there is a laneway to the west which will be retained and formalised.

Accordingly, the underlying purpose to provide amenity and privacy through appropriate building separation is not as relevant in this instance as a large portion of the non-compliance is simply an access core.

**Test 4 - the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;**

This suggests Council has virtually abandoned strict application of the development standard through granting consents to non-complying developments. As shown in Table 1, there have been numerous variations to the building separation development standard approved within the Wollongong CBD in the past couple of years. Given the number of approved developments within the B3 Commercial Core and B4 Mixed Use zones every year, the eight developments requiring a variation represent a large proportion of approved high density development. The variations range from 3.5m to 20m and indicate strict compliance is not always possible in constrained inner city allotments. In addition, the majority of existing development constructed prior to the LEP 2009 also does not provide upper level building separation that would comply under the current controls.

<b>Table 1: Recent Variations to Clause 8.6 within Wollongong CBD</b>				
<b>DA No.</b>	<b>Location</b>	<b>Distance from Subject Site</b>	<b>Details of Variation</b>	<b>Variation</b>
2018/973	28 Young Street	625m	Requires: Min 20m Provides: 0m	20m
2017/1462	47 Burelli Street	100m	Requires: 0m Provides: 5.66m	5.66m
2017/730	131-135 Keira Street	415m	Requires: Min 16m Provides: 5.06m	10.94m
2017/493	95-109 Crown Street	Adjoining	Requires: Min 12m Provides: 4.42m	7.58m
2016/1719	38 Atchison Street	645m	Requires: Min 3.5m Provides 0m	3.5m
2016/1557	385A Crown Street	1370m	Requires: Min 16m Provides: 6m	10m
2016/1073	31 Atchison Street	570m	Requires: Min 20m Provides: 14m	6m
2016/969	48 Bank Street	340m	Requires: Min 20m Provides: 7m	13m

In addition, Section 2.5 in Chapter D13: Wollongong City Centre of the Wollongong DCP 2009 contains separate building setback controls which assumes the building separation required by the LEP is evenly shared between the sites. Given the presence of existing developments, this is rarely the case. As a result, the DCP control is often in conflict with the LEP development standard. The incorporation of the DCP provisions further suggests Council has effectively abandoned strict application of the development standard.

## **5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard**

There are a number of environmental planning grounds that justify the building separation shortfall. In addition to compliance with the objectives of the zone and development standard; environmental planning grounds include the setbacks of the approved development at Lang's Corner, compliance with the objectives of Part 8 of the DCP, and urban design and streetscape considerations. These will now be addressed.

### Lang's Corner Development

The approved commercial development on the Lang's Corner site provides a western side setback facing the subject site of 4.5m. It would be unreasonable to penalise the subject site for offering the same side setback as the approved development. Enforcing strict compliance would require a 7.5m setback along the shared boundary which would significantly restrict the lettable floor area and the potential for redevelopment in accordance with what Council envisages for the site.

Accordingly, as a consequence of the approved Lang's Corner development, enforcing strict compliance would inhibit the orderly and economic development of the land in accordance with Object 1.3(c) of the EPA Act.

### Objectives for Development in the Wollongong City Centre

Clause 8.1 – Objectives for Development in Wollongong City Centre contains objectives which relate to Part 8 of the LEP, including Clause 8.6 – Building Separation. Accordingly, an assessment against these more general objectives is helpful in establishing environmental planning grounds.

- (a) *to promote the economic revitalisation of the Wollongong city centre,*
- (b) *to strengthen the regional position of the Wollongong city centre as a multifunctional and innovative centre that encourages employment and economic growth,*
- (c) *to protect and enhance the vitality, identity and diversity of the Wollongong city centre,*
- (d) *to promote employment, residential, recreational and tourism opportunities within the Wollongong city centre,*
- (e) *to facilitate the development of building design excellence appropriate to a regional city,*
- (f) *to promote housing choice and housing affordability,*
- (g) *to encourage responsible management, development and conservation of natural and man-made resources and to ensure that the Wollongong city centre achieves sustainable social, economic and environmental outcomes,*
- (h) *to protect and enhance the environmentally sensitive areas and natural and cultural heritage of the Wollongong city centre for the benefit of present and future generations.*

The proposal is for a landmark development that will integrate with the approved Lang's Corner building to revitalise the Wollongong city centre, and in particular the eastern gateway to the Crown Street Mall. The proposal will provide 10,120m<sup>2</sup> of A-Grade commercial floor space which will attract high profile and high value tenants. This has the potential to create economic multipliers in the precinct which will further benefit the CBD in accordance with the objectives of Part 8 of the LEP. Enforcing strict compliance with the building separation controls would be a lost opportunity to integrate with the Lang's Corner building and severely restrict the floorplate on the upper levels. The proposed lettable floorplate is necessary to attract government and other high-profile tenants who would make a positive contribution to the revitalisation of struggling eastern end of the Crown Street Mall. It will also provide increased flexibility for tenants which encourages a diversity of commercial uses.

Accordingly, although non-compliant, the proposed building separation facilitates floorplates that will appeal to the type of tenants that will contribute to the desired economic revitalisation of the city's commercial core and achieve design excellence.

### Urban Design

The proposal provides a superior urban design outcome compared to a strictly compliant development. The non-compliance could be reduced by relocating bulk to the western boundary at street frontage height, in place of Lois Lane. However, it is a preferred design solution for the public domain to formalise and activate the laneway in accordance with Council's strategies. The laneway also increases the activated frontage capable of being achieved on the site. The proposed consolidation of vehicular cross overs along Simpson Place and the proposed activation of this street is also a positive urban design outcome at the human scale.

The integration with the Lang's Corner development which is currently under construction also provides the opportunity to achieve a better design outcome than can be achieved by strict compliance. The service core will be matched with the adjoining building to maximise the design efficiency without resulting in adverse amenity impacts. The proposal will also match the podium height, façade detailing and articulation of Lang's Corner to create visual consistency in the streetscape. Rebuilding the façade panels of the Kembla Chambers building and extending these to the rest of the Crown Street frontage provides visual interest at street level and retains the streetscape rhythm created by the panels along Lang's Corner. Collectively, the panels create a natural variation in texture which contrasts well with the more contemporary tower elements behind. This view was shared by the DRP who indicated a positive outcome of the proposal is "continuous podium expression and harmonious and complementary façade expressions..." Design excellence in accordance with the provisions of Clause 7.18 of the LEP is further addressed in a submission by ADM Architects, separately submitted.

A reason of the building separation control is to avoid large blank facades that do not contribute to the streetscape. The proposal employs a variety of urban design strategies to ensure that, despite the building separation non-compliance, the perceived scale will not appear inconsistent in the streetscape. This includes providing an articulated façade with a recessed element which gives the appearance of separate built forms. The articulation has been increased in response to Council feedback at the DRP meeting and will be a significant improvement on the existing four storey building with limited articulation.

Accordingly, although strictly non-compliant, the building separation contributes to an improved urban design outcome for the site. This is consistent with Object 1.3(g) to the EPA Act which is to promote good design and amenity of the built environment. Further details on the design excellence achieved by the proposal in accordance with Cause 7.18 of the LEP is provided in a submission prepared by ADM Architects and separately submitted.

### Consistency with Context

The proposal is permissible within the B3 Commercial Core Zone and is consistent with the zone objectives. The proposed building separation is also consistent with the surrounding density and scale in the area, which is shown in Section 2. In *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, Commissioner O'Neill states at [42] that:

*I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).*

The DRP shared the view that the design is a consistent scale stating, inter alia:

*The proposal takes advantage of the desired vision for this part of the town centre by proposing a similar scale development to the one already approved at 95-109 Crown Street (henceforth Lang's Corner). It is the Panel's opinion that the proposal will have a good 'contextual fit' (pending some adjustments to the built form) with the desired future character of the precinct and with the adjacent approved development, which has been facilitated due to the ownership of both sites by a single entity.*

The minor building separation non-compliances facilitate a compliant height which is consistent with surrounding and desired future development. The proposed non-compliances facilitate an economically viable development and will result in an improved urban design outcome which is consistent in the streetscape.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard, as required in Clause 4.6(3)(b).

## 6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the Consent Authority's consideration of this Clause 4.6 variation request. It provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

The applicant submits that the consent authority can and should be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this request, and having regard to the site and locality.

In our opinion the proposal achieves the objectives of the development standard and Part 8 generally, as already demonstrated; and the B3 Commercial Core Zone, as discussed in Section 4.1.1 of the SEE. From this, we consider the proposal is in the public interest and should be supported.

## 7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the Consent Authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each Consent Authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (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.*

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The building separation non-compliance will enhance the amenity, functionality and lease-ability of the proposed commercial building without significantly impacting neighbouring properties. The public

benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

## **8. Conclusion**

This written request has adequately demonstrated that compliance with the development 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. This is summarised in the compliance matrix prepared in light of *Initial Action* (see Table 2 on the following page).

We are of the opinion that the Consent Authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the B3 Commercial Core Zone pursuant to the LEP. On that basis, the request to vary Clause 8.6 should be upheld.

Table 2: Compliance Matrix

Para (Initial Action)	Requirement	Section	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Building Separation	
12	What is the control	1 & 3	<ul style="list-style-type: none"> <li>0m to street frontage height</li> <li>12m between street frontage height and 45m</li> <li>28m above 45m</li> </ul>	
14	<b>First Precondition to Enlivening the Power –</b> Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	<b>1<sup>st</sup> Positive Opinion –</b> That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	4	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	<b>First Aspect is Clause 4.6(3)(a) –</b> that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	5.1	The proposal is consistent with Tests 1, 2 and 4 of <i>Wehbe</i> : <ul style="list-style-type: none"> <li>The objectives of the standard are achieved notwithstanding the non-compliance with the standard;</li> <li>The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable; and</li> <li>The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.</li> </ul>	YES
23-24	<b>Second Aspect is Clause 4.6(3)(b) –</b> The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be indirectly satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: a) The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the	5.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> <li>The proposed building separation facilitates a high density commercial development consistent with the planning objectives of the area;</li> <li>The proposal complies with the height development standard and remains consistent in the streetscape;</li> <li>Despite the non-compliance, reasonable privacy and amenity will be retained;</li> <li>The building separation is necessary to attract high</li> </ul>	YES

	<p>development as a whole, and why that contravention is justified on environmental planning grounds.</p> <p>b) The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.</p>		<p>profile tenants that would stimulate renewal in the area; and</p> <ul style="list-style-type: none"> <li>The non-compliance contributes to an improved urban design outcome.</li> </ul>	
26-27	<p><b>2<sup>nd</sup> Positive Opinion –</b></p> <p>That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.</p>	6	<p>The proposed development is consistent with the objectives of the building separation standard as addressed under Test 1 of <i>Webbe</i>. The proposal is also consistent with the objectives of the B3 Commercial Core Zone, as addressed in the SEE.</p>	YES
28-29	<p><b>Second Precondition to Enlivening the Power –</b></p> <p>that the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.</p>	7	<p>As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.</p>	YES