



Appendix A – LEP Variations

Introduction

This Clause 4.6 Variation Request has been prepared to support a development application under Division 4.3 of the Environmental Planning and Assessment (EP&A) Act 1979, for Mixed use Development at Lot 1 & 2 DP 543836, 24-30 Kenny Street, Wollongong. This request satisfies the requirements of Clause 4.6 of the Wollongong Local Environmental Plan 2009 in demonstrating that:

- 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 Variation Request is seeking to vary Clause 8.6 of Wollongong Local Environmental Plan 2009 (WLEP 2009) and should be read in conjunction with the architectural plans provided with the Development Application.

This variation has been prepared in accordance with the NSW Department of Planning Infrastructure (DPI) guideline “Varying Development Standards: A Guide” dated August 2011 and addresses the ‘five-part test’ established by the NSW Land and Environment Court (LEC) to determine whether the objection is well founded.

Subject land

The subject land is located at 24 - 30 Kenny Street, Wollongong and is legally described as Lot 1 & 2 DP 543836. The subject site is located at the southern extent of the Wollongong City Centre area, on the eastern side of Kenny Street midway between the intersections with Burelli Street (north) and Ellen Street (south).

The site is a regular allotment of 2466m² and currently contains a mental health well-being centre in the northeast. The central west portion of the site was used as a storage shed and car park (24 Kenny Street) and F45 Gym training & St John’s Ambulance services (30 Kenny Street). All structures and surfaces are proposed to be demolished to support the new development.

Applicable Environmental Planning Instrument

The applicable Environmental Planning Instrument subject to this Variation Request is the Wollongong Local Environmental Plan 2009,

Wollongong Local Environmental Plan 2009

Wollongong Local Environmental Plan 2009 (WLEP 2009) provides the key development standards applicable to the development and includes the aims and objectives for the development within the Wollongong Local Government Area. In particular, this Variation Request is seeking to vary the development standard Clause 8.6 of Wollongong Local Environmental Plan 2009 (WLEP 2009).



Objectives of the Development Standard

To satisfy the requirements of Clause 8.6 and demonstrate that compliance with the standard is unreasonable or unnecessary, it is important to understand the intent and objectives of the development standard being varied.

(1) The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.

Description of the Variation

This Clause seeks to ensure sufficient separation of buildings for visual appearance, privacy and solar access reasons. In accordance with *Sub-clause 2 and 3*, buildings on land within Zone B3 Commercial Core 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...”*

The site is located in Zone B3 Commercial Core and incorporates the following building setbacks/separation between properties and developments:

Boundary	Proposed Level(s)	Development Standard	Min Proposed Setback/Separation	Compliance	% Variation
West (residential developed)	Ground Level (commercial)	16 metres (commercial / residential interface)	0 metres setback 6.55 metres separation	No	60% shortfall
West (residential developed)	Level 1 (commercial)	16 metres (commercial / residential interface)	12.58 metres setback 18.6 metres separation	Yes	
West (residential developed)	Levels 2-4 (commercial)	16 metres (commercial / residential interface)	12.02 metres setback 18.04 metres separation	Yes	
West (residential developed)	Levels 5-7 (residential)	20 metres (residential / residential interface)	11.94 metres setback 18.04 metres separation	No	9.9% shortfall
West (No building above Level 7)	Levels 8 and above (residential)	N/A – no building interface	N/A	N/A	
North (commercial under-developed)	Ground to Level 4 (commercial)	0 metres (commercial)	0 metres	Yes	
North (commercial under-developed)	Levels 5 to 13 (residential)	20 metres (above 45 metres)	12 metres setback 24 metres separation (allowance)	Yes	



North (commercial under-developed)	Levels 14 and above (residential)	28 metres (above 45 metres)	Min 12 metres Min 24 metres separation (allowance)	No	15% shortfall
South (commercial under-developed)	Ground to Level 4 (commercial)	0 metres (commercial)	0 metres	Yes	
South (commercial under-developed)	Levels 5 to 13 (residential)	20 metres (above 45 metres)	12 metres 24 metres separation (allowance)	Yes	
South (commercial under-developed)	Levels 14 and above (residential)	28 metres (above 45 metres)	Min 12 metres Min 24 metres separation (allowance)	No	15% shortfall

As shown above, the development is compliant to the northern and southern boundaries all the way up to Level 14. Above level 14, the minimum setback allowance provided for incorporates a shortfall of 15% of the development standard. The variation is considered relevant as the sites to the north and south remain undeveloped at this time.

To the west rear boundary, the proposed development results in various non-compliance shortfalls between Levels 5 and 7 only. This is essentially as a result of the building to the west being too close to the common rear boundary and not complying with the development standards in its own right. From level 8 and above, the development standard is not applicable as the site to the west is completely developed and has no building form above this level.

Therefore, the development falls short of the minimum building separation requirement contained in *Clause 8.6* to which this *Clause 4.6* variation is requested.

How is compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

In *Wehbe v Pittwater Council* [2007] NSWLEC827 (*Wehbe*), Preston CJ identified five (5) ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. While *Wehbe* related to objections pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 because subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

The five (5) ways outlined in *Wehbe* include:

- 1. The objectives of the standard are achieved notwithstanding noncompliance with the standard (First Way)*
- 2. The underlying objective of purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way)*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way)*



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 (Fourth Way)

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).

Additionally, of note, in the judgment in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 the Chief Judge upheld the Commissioner's approval of large variations to height and FSR controls on appeal. He noted that under Clause 4.6, the consent authority (in that case, the Court) did not have to be directly satisfied that compliance with the standard was unreasonable or unnecessary, rather that the applicant's written request adequately addresses the matters in Clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary.

In this regard, this written request establishes and adequately addresses the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary because the objectives of the standard are achieved irrespective of the non-compliance and accordingly justifies the variation pursuant to the **First Way and Forth Way** outlined in Wehbe, as follows.

Objectives of the B3 Commercial Core Zone:

The zone objectives are as follows:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community;*
- *To encourage appropriate employment opportunities in accessible locations;*
- *To maximise public transport patronage and encourage walking and cycling;*
- *To strengthen the role of the Wollongong city centre as the regional business, retail and cultural centre of the Illawarra region;*
- *To provide for high density residential development within a mixed use development if it:*
 - (a) is in a location that is accessible to public transport, employment, retail, commercial and service facilities, and*
 - (b) contributes to the vitality of the Wollongong city centre.*

The relevant zoning objectives outline a need to strengthen the role of the City Centre by providing for a range of land use activities that support employment and public transport patronage (as above).

The proposed development is permissible within the B3 zone as a shop top housing and hotel accommodation development, and includes a mix of uses to serve the needs of the local and wider community. It provides for a ground floor café, which will activate the street edge through food and drink offering to residents, workers and visitors. The hotel accommodation provides for much needed tourist and visitor accommodation to help support the role of Wollongong City Centre as a regional business, retail and cultural centre. Whilst the provision of high density residential living further meets the needs of the community by providing



additional residential accommodation within close proximity to the CBD precinct and public transport (near local bus route and Wollongong train station).

The proposed development will create a range of temporary employment opportunities throughout construction, as well as ongoing part-time and full-time employment opportunities with the provision of a hotel and café land use that will require staffing for ongoing operations as respective businesses. Further to this, the establishment of a mixed-use building like this will create spin off employment opportunities through building management and maintenance contracts for the life of the development.

Such a proposal is in high demand for the immediate area (from a land use perspective) and the site itself is very accessible from a patronage and public transport viewpoint. The site is ideally located to encourage walking and cycling.

It is considered that, despite the exception to development standard proposed, the proposed development is clearly consistent with the objectives of this B3 zone.

Objective of the Development Standard:

Under WLEP 2009, Clause 8.6 has the following objectives in relation to the Building separation within Zone B3 Commercial Core or Zone B4 Mixed Use development standard:

(1) The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.

Visual Appearance

The proposal incorporates attractive and well-considered architectural design, materials and details which reflect the proposed high-quality mixed use development. The visual appearance of the proposed development responds to the existing and future local context, particularly in desirable elements and repetitions of the streetscape.

The building facade to Kenny Street emphasises and accentuate parts of the elevation through the use of a similar language to achieve a cohesive building outcome and understand the theory and principles behind the design. Changes in colour and façade materials help to articulate the podium and addresses street frontage with appropriate proportions.

The theory and principles to the aesthetics of the building design have arrived from a multiple of stimulants and ideas culminating in a focused and narrowed theory gathered from the development of the building and the surrounding context.

Developing the constraints and opportunities of the site has allowed the building to move and transform from the active to a sense of the building's simplicity and nature. The language of the building's facades has been carried through responding to the site forces, orientation and constraints posed by the site. The use of materials and colours has also been carried through to help express this language.



The overall envelope is an appropriate design and scale which reflects the site's constraints and permissible yield in terms of GFA and building height enabled by WLEP 2009 (which is compliant). The breakdown of the podium and tower help to create an aesthetic quality which will sit comfortably in its surrounding scale and context, as well respond to the developments existing and newly constructed. As explained in the design excellence statement prepared by GYDE –

The rectilinear tower is set back from street front and includes design elements that are lighter in their form and execution to soften the visual impacts of upper levels, while in contrast, accentuating the visual strength of the podium. The uppermost levels are set back to reduce visual impact and a chamfered cap 'crowns' the building.

The building's floors are visually expressed on the building's exterior, which provides a subtle horizontal emphasis between floors. These horizontal elements are balanced with vertical banks of glazing, masonry, screening devices, and recessed elements which create visually interesting volumetric forms. The corner balconies feather the buildings edges, softening the visual appearance of upper levels.

The building is designed to face all directions with subtle shifts in its visual programming, this is supported by a tapering of upper levels from the rear boundary.

The central glazed element expressed through the centre of the tower linking with the central portion of the podium provides vertical emphasis to the building while breaking the face into smaller perceivable elements for visual interest.

Consideration has been made to all façades where walls are articulated with texture and pattern to mitigate any blank walls. Pop-out and high level window elements have been used to the western and southern elevations to create visual interest to these edges, particularly when viewed from various angles surrounding.

Selected quality, modern, durable and environmentally sustainable external finishes ensures the proposed development enhances the amenity of the local area. Carefully selected colours sympathetic to the visual composition of neighbouring developments maintains and responds appropriately to the current and desired future character of the precinct. The materials selected such as masonry render and paint in various shades, several of types of glazing, textured feature walls have provided the building with a high quality, low maintenance external façade that contributes positively to the visual presentation of the development.

At the interface between the western residential development and the rear boundary, the visual appearance of the building has been consciously prepared based on the proximity interface proposed. Extensive landscaping treatments and garden podium plantings are provided at these lower levels on the western façade so as to soften, articulate and provide added visual interest and appearance. At Levels 5-7, the visual appearance of the western façade has been broken up and articulated with vertical screenings to living room windows and balconies – accommodating aesthetic interest and privacy outcomes at the same time.



Above 45 metres, the building steps in at a certain point, however architecturally it has been designed to create a tower building form (without the 'wedding cake' design appearance).

Privacy

Privacy has been considered specifically in the design response shown in the architectural interface treatment to these corresponding side boundaries to the western elevation (almost as if they were non-habitable type facades). Elevational interface with the rear is more active in a habitable sense, but separation distances are greater and non-compliance with this setback is only minor (and for only a portion of the building at Levels 5-7). Again, extensive landscaping, planters and screening is provided throughout this western portion at the lower levels to respond to the adjoining residential building so as to ensure that privacy is not an issue of concern, whilst the upper level interfaces are mitigated by virtue of apartment design orientation and screen elements.

The internal layout of the rooms attempts to minimise overlooking with the careful location of window and door openings, whilst the size of external balconies also help maintain such visual separation. From Level 5 and above, the 2 rear western residential apartments are designed to promote northern and southern views through balcony orientation and window treatments, rather than direct western interface views with the adjoining residential building.

Acoustic privacy for future visitors and neighbouring land uses has also been taken into account, with the proposed development being designed to limit noise intrusion into adjoining properties through the use of appropriate building materials and associated noise control treatments. Extensive planting is provided to the communal podium areas to ensure that noise is mitigated in part throughout. The use of these communal spaces to daytime only will also ensure that sleep disturbance criteria is not affected for the adjoining residential building. It is respected this could be incorporated as a condition of consent as per the plan of Management.

Whilst balconies for certain residential apartments above Level 5 are oriented in part west, they are physically accessed via north-south oriented door openings, so that internal sound can be directed away from the residential apartments. Physical screening is provided to windows and additional planters are provided at upper levels.

Through smart design treatments responding to habitable v non-habitable interfaces, the proposed building separation complies with the minimum required separation distances identified within the SEPP 65 Apartment Design Guide (only requiring 18m at Levels 5-7), to achieve reasonable levels of external and internal visual privacy. This Apartment Design Guide provides greater detail on how residential development proposals can meet these principles through good design and planning practice, which has reduced permitted building separation criteria up to 9 storeys above ground level compared to WLEP 2009. For the most part the proposed development is consistent with much of the ADG criteria, when considering both non and habitable faced interface treatments proposed to ensure appropriate levels of all round privacy are achieved.

The proposal is consistent with the separation distances outlined in the ADG, which prevail pursuant to SEPP 65.



With no developments to the north and south currently at 45 metres and above, there are no envisaged privacy impacts to occur. Notwithstanding, the shortfall is only minor at this height, and any future developments to the north and south should be appropriately able to accommodate building separation privacy. Noting that the proposed setbacks comply with the ADG at these levels anyway.

Solar access

The layout and planned design are a direct response to the site's orientation. The apartments aspects being used for primary living spaces are orientated east and west where possible to maximise the main solar collectors during morning and afternoon and main outlook for the development.

The layouts demonstrate grouping of the services and circulation space and living areas throughout, encompassing a northern edge that is treated architecturally with high-level and pop-out windows of smaller proportion to gain advantage of the solar access still (but at the same time limit privacy interface issues).

A SEPP 65 Compliance table has been provided by DWA Architecture and is attached to the DA submission package for Council's consideration. Sun-eye diagrams and solar access diagrams are provided by DWA to demonstrate likely overshadowing impacts as a result of the proposed development. Again, in terms of building form, the setbacks proposed within the subject site are relatively compliant with the building separation criteria when viewed across the east-west axis (noting that the primary reason for non-compliance at the western lower levels is due to the building to the west being too close to the common boundary and non-compliant in its own right). As a result, it is considered that the massing of the built form from a planning perspective will be acceptable in terms of overshadowing accordingly.

The encroachments into the northern and southern setbacks at 45 metres and above are limited and compliant with the ADG, and are also deemed to be acceptable from an expected overshadowing consideration.

On this basis, the proposed development has been assessed against each objective contained in Clause 8.6 of WLEP 2009. Thus, deeming strict compliance with these building separation values is unwarranted in the circumstances of this particular case.

Development Standard Abandoned:

In relation to the Fourth Way – *“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 (Fourth Way)”* – it is noted that the following DAs did proposed variations to the building separation development standards, and were approved by Council accordingly:

DA-2016/969: 48 Bank Street WOLLONGONG NSW 2500

Demolition of existing structures and construction of shop top housing comprising ground floor commercial and six residential levels with basement parking



DA-2017/1462: 47 Burelli Street WOLLONGONG NSW 2500

Demolition of all structures, and the construction of a seven (7) storey office building for IMB bank with two basement car parking levels for 89 car parking spaces

DA-2017/493: Langs Building 95-109 Crown Street WOLLONGONG NSW 2500 Commercial - demolition of existing building and construction of new commercial premises comprising of offices and retail tenancies

DA-2017/730: 131-135 Keira Street WOLLONGONG NSW 2500

Demolition of existing buildings and ancillary structures and the construction of a mixed use development above basement parking

DA-2018/1638: 71-77 Kembla Street WOLLONGONG

Mixed use development - fourteen (14) storey building comprising of one hundred and two (102) residential units and eight (8) commercial tenancies over two (2) levels of basement parking

DA-2018/973: 28 Young Street WOLLONGONG

Residential - demolition of existing structures and construction of a 15 storey mixed use development comprising seven (7) commercial tenancies, 64 residential apartments and car parking for 90 vehicles

DA-2019/1122: 20-26 Young Street WOLLONGONG

Demolition of existing structures and construction of a 15 storey mixed use development comprising 60 residential units, six (6) commercial tenancies and parking for 89 vehicles

DA-2019/779: 80 Market Street WOLLONGONG

Commercial - demolition of existing structures and construction of a six (6) storey development

DA-2019/1123: 35 Atchison Street WOLLONGONG

Demolition of existing structures and construction of a 14 storey mixed use development comprising 50 residential units, one (1) ground floor commercial tenancy and two levels of basement parking

DA-2020/1465: 15-19 Crown Street WOLLONGONG

Mixed use development - construction of a 13 storey residential flat building over a ground level commercial premise and one (1) level of basement parking

DA-2020/1292: 46 Crown Street WOLLONGONG

Demolition of existing structures and construction of a mixed use development

DA-2020/80: 290-294 Keira Street WOLLONGONG

Demolition of existing structures and construction of a seven (7) storey mixed use development comprising 34 residential units and two (2) commercial tenancies with 50 parking spaces

DA-2019/1231: 111-113 Crown Street WOLLONGONG

Demolition of existing structures and construction of A-Grade office building above retail and basement parking

These are only some of the DAs on Council's register to which a Clause 4.6 variation to the building separation requirements under clause 8.6 have been supported by Council. It is



reasonable to suggest that the above DAs were considered on merit and specific to the circumstances of the particular case, without Council totally abandoning the development standard altogether. However, it must also be acknowledged that this development standard, by virtue of how often it has been varied (close to 25 occasions at last count), could also be considered discarded or less critical from a planning consideration perspective.

In terms of strategic intent, it is noted that at the Ordinary Meeting of Council on 7th December 2020, Council Officers recommended that the draft Wollongong City Centre Planning Strategy, draft Wollongong City Centre Planning Proposal and draft Wollongong DCP 2009 – Chapter D13 Wollongong City Centre be endorsed for Gateway determination and subsequent exhibition. Within the draft Wollongong City Centre Planning Proposal it was proposed to remove the requirement for residential building separation altogether, as it was acknowledged that this development standard under Clause 8.6 has been superseded by SEPP 65 and the ADG. Whilst the decision to endorse the Council recommendation was deferred and subject to further studies, there is a clear recognition from Council Officers that this development standard is outdated.

Thus, deeming strict compliance with the minimum building separation is unwarranted (Forth Way) in the circumstances of this particular case.

Are there sufficient environmental planning grounds to justify contravening the development standard?

Yes, there are sufficient environmental planning grounds in the circumstances of the case to justify contravening the development standard. These include:

The unique circumstances at the site which warrant the provision of reduced setback:

Adopting building separation requirements to dwellings to the west would mean a minor part of the subject site would be excluded from any built form with the non-compliance not materially noticeable from a compliant situation. The building existing to the west has been built to close to the rear common boundary and is non-compliant in its own right. Precedence regarding this planning ground has recently been set by the approved developments noted above which sought to vary the same control and was subsequently approved. Notwithstanding, Levels 5-7 at the west are still compliant with the State-based ADG requirement of 18 metres in this instance, which should prevail over the LEP development standard. The western site has still been able to achieve the maximum permitted FSR building form and at the same time still achieve reasonable building separation.

To the north and south, the area of concern relates to only 45 metres and above, and again the building separation proposed is consistent with the State-based ADG, which in our opinion should prevail in this instance.

Therefore logically, restricting a built form envelope by this amount is completely impractical for a B3 zoned Commercial Core site at this location and, therefore, totally unreasonable, given the precedence to consider in this instance.



The proposed building form does not result in any significant adverse impacts and achieves a good urban development outcome for the site:

The building intrusions into the side and rear setbacks are a direct design response with the intent to allow the site to respond to the demand for housing in the area, whilst supporting Wollongong Councils objectives for built form within the B3 zoned Commercial Core.

The proposed bulk and scale of this building is considered appropriate for this location and will not detrimentally affect the visual appearance of the area (in fact it will substantially improve an aged part of the city, which is undergoing change with other similar scale redevelopments occurring nearby). The overall height and form of the development is consistent with expected future desired character strategies for the area. Stepping the building in a few metres more at Levels 5-7 and 45 metres above in our view would diminish the opportunity for a good urban development outcome from a visual aesthetic perspective.

The proposal incorporates attractive and well-considered architectural design, materials and details which reflect the proposed high-quality residential development inclusive of ground floor commercial use. The proposal involves well-articulated façades with the incorporation of a single tower building envelope featuring defined building lines to minimise bulk (and avoid a 'wedding cake' look). The proposal will deliver good internal amenity for prospective residents and commercial occupants.

Again, the adjoining site is still able to achieve their maximum permitted FSR building forms and at the same time still achieve reasonable building separation.

The maintenance of design excellence through the proposed alternate strategy, which has been designed to be a core element of the delivery of the integrated station development outcome:

“ In considering whether development to which this clause applies exhibits design excellence, the consent authority must have regard to the following matters:

- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- (b) whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,*
- (c) whether the proposed development detrimentally impacts on view corridors,*
- (d) whether the proposed development detrimentally overshadows an area shown distinctively coloured and numbered on the Sun Plane Protection Map,*
- (e) how the proposed development addresses the following matters:*
 - (i) the suitability of the land for development,*
 - (ii) existing and proposed uses and use mix,*
 - (iii) heritage issues and streetscape constraints,*
 - (iv) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
 - (v) bulk, massing and modulation of buildings,*
 - (vi) street frontage heights,*
 - (vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
 - (viii) the achievement of the principles of ecologically sustainable development,*
 - (ix) pedestrian, cycle, vehicular and service access, circulation and requirements,*



(x) impact on, and any proposed improvements to, the public domain.”

The urban design has been developed in accordance with the relevant design excellence provisions of the WLEP 2009, as well as other strategic and statutory considerations relevant to the proposed shop top housing development. ‘Design Excellence’ has been the cornerstone of the design process for the design team and has been achieved through a rigorous design development process in collaboration with a team of specialist consultants. Indicate report has been prepared by GYDE.

The architectural design, materials and detailing are of a high standard that is appropriate to the building type and location. The external appearance and form of the development will improve the quality and amenity of the public domain in the immediate vicinity of the site.

The proposal will not unreasonably impact on view corridors given it is below the maximum height limit of 60m and provides for consistent building lines throughout the levels. The land is suitable for the proposed mixed-use development and the allocated mix of commercial/residential floor space, given the location of the site on the edge of the City Centre.

The proposal is and will be compatible with future developments in the immediate vicinity of the site, including consideration of the approved DA to the south in relation to built form and materials and finishes, and therefore will enhance the streetscape (which currently contains several older style buildings that are in need of refurbishment or repair, including those situated on the subject site that will be demolished as part of the DA).

The location of the tower and the proposed bulk, massing and modulation of the building is acceptable and does not result in any unreasonable loss of amenity to any of the adjoining properties. The proposed street frontage heights are considered appropriate having regard to the surrounding context and scale of development.

The proposal will have no significant adverse environmental impacts in terms of sustainability, overshadowing, wind and/or reflectivity. Relevant details have been provided in this regard to enable a full assessment (i.e. shadow diagrams, wind report, BASIX certificates etc).

Access to the site has been carefully considered in a variety of forms (i.e., for pedestrians, motorists and cyclists alike), with suitable provisions to allow for service access and circulation. The proposed development will have a positive impact on the public domain and interface of Kenny Street.

This will significantly improve the amenity and character of the blocks/precinct surrounding the location. It will also allow for natural surveillance of the area with regards to the principles of Crime Prevention Through Environmental Design (CPTED).

The delivery of a development outcome which does not result in any adverse environmental impacts

Environmentally sustainable measures incorporated in the development include:



- Building orientates to maximise solar gain;
- Design solution provides effective benefices to cross flow ventilation;
- Maximised planting within the communal open space;
- Ethically source long lifecycle products and materials;
- Dual flush toilets;
- Rainwater to be used for garden irrigation;
- Taps fitted with water efficient fittings;
- Insulation and sisalation under roof;
- Proposed visitor and residential bicycle parking in compliance with Wollongong Council's Development Control Plan

We acknowledge the proposed development will bring some overshadowing impact upon the neighbouring properties to the south, however, the development to the south will still receive sufficient solar access as shown in the shadow analysis diagrams which means no unreasonable loss of residential amenity will be created as a result of the proposal.

The reduced building separation is deemed reasonable and acceptable due to the reduced impacts to privacy and overlooking, created specifically by responsive architectural interface treatment to these boundaries.

Overall, it is evident from the above commentary if there are sufficient planning grounds to justify contravening the building separation development standards identified. To this end, strict compliance with the numerical development standards is both unwarranted and unnecessary in this instance.

Is the proposed development in the public interest because it is consistent with the underlying intent of the development standard and the objectives for development in the zone

Yes, the proposal will provide additional floor space within a residential flat building to meet the housing needs, in turn meeting the needs of the local community. The development is generally compliant with the nine (9) design quality principles of SEPP 65 – Design Quality of Residential Apartments and the design principles and numerical requirements of the Wollongong Development Control Plan 2009 (WDCP 2009) and is therefore compatible with its location. Again, the area of concern relates to only 45 metres and above, and the building separation proposed is consistent with the State-based ADG, which in our opinion should prevail in this instance.

Does contravening the development standard raise any matters of significance for the State or regional environmental planning?

No, contravening the development standard in this case does not raise any matters of State or Regional planning significance.

Is the objection well founded?

For the reasons outlined in the previous sections above, the objection is considered to be well founded in this particular instance. Granting an exception to the development standard can therefore be supported in the circumstances of the case.



The proposed development will be consistent with the outcomes envisaged in the zoning and policy framework. The development is also compatible with the relevant objectives specified in Section 1.3 of the EPAA 1979.

Conclusion

This Clause 4.6 Variation Request has been prepared to support a development application for a Mixed use Development at Lot 1 & 2 DP 543836, 24-30 Kenny Street, Wollongong. This request satisfies the requirements of Clause 4.6 of the Wollongong Local Environmental Plan 2009 (WLEP 2009) and demonstrates that compliance with the standard is both unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify varying the standard in this instance.