



## Appendix A – LEP Exception to Development Standard

### 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 new mixed-use multi-storey commercial/residential development (shop top housing) at Lot 81, 82 and 83 DP 10704, and Lots 3, 4, 5, 6 and 7 DP 10704, and Lot 10 DP 309092, 4-8 Parkinson Street and 377-383 Crown 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 Building separation within Zone E2 Commercial Centre or Zone MU1 Mixed Use* of Wollongong Local Environmental Plan 2009 (WLEP 2009) and should be read in conjunction with the Urban Link architectural plans provided with the DA. The proposal breaches the building separation development standards to existing buildings to the east and west at the lower levels of the development, set by Clause 8.6(2) and 8.6(3). The particular circumstances for this variation relate to the fact that most of the adjoining sites remain underdeveloped (in accordance with contemporary planning controls and zone objectives), and neighbouring buildings themselves don't meet current building separation requirements for future precinct planning. To accommodate compliant building separation requirements to these existing boundary conditions would result in an inferior urban design outcome (inconsistent with the desired future character) and a development which does not promote the orderly and economic use of the land.

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 site is located in the western precinct of Wollongong City Centre. It is described as Lot 81, 82 and 83 DP 10704, and Lots 3, 4, 5, 6 and 7 DP 10704, and Lot 10 DP 309092, 4-8 Parkinson Street and 377-383 Crown Street, Wollongong. The site is an irregular allotment of 5,080m<sup>2</sup>.

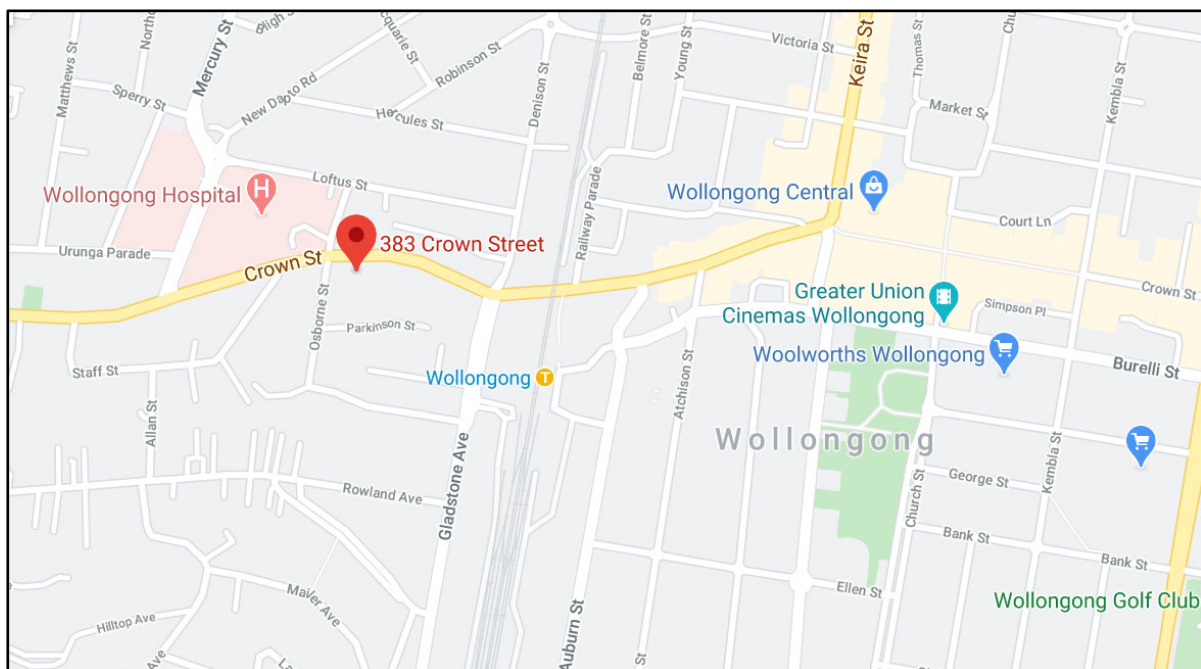
The subject site is relatively free of any notable encumbrances and/or easements, apart from an existing right of carriageway along the western boundary of Lot 7, which is intended to be maintained in perpetuity. This right of carriageway will not be disturbed as a result of the proposed development, and the building form is setback away from this area of encumbrance.

Within this City Centre precinct, several character areas have been identified under WDCP 2009, with the site being situated within the 'Commercial Core' area being described as:-

*“Commercial Core – Provides for a wide range of retail, business, office, civic and cultural entertainment and community uses, including tourism and leisure uses and residential uses within mixed use development.*

*The commercial core is the ‘heart of the city’, where the focus is on high quality buildings, streetscapes, public art, outdoor eating and a collection of attractive public spaces such as new forecourt to the railway station, rejuvenated MacCabe Park and Crown Street Mall, new civic square on Crown Street and an attractive collection of laneways and arcades. The primary retail focus is Crown Street Mall. The core retail area along Crown Street is generally characterized by street enclosing buildings forming continuous building facades that provide for an active street frontage to all commercial core streets. Streets are to have continuous awnings to give weather protection to concentrated pedestrian street activity.”*

The site itself is a short walking distance from the Crown Street Mall Shopping Centre area (approximately 650m east), which has a reasonably full range of business enterprise services and other support related activities and land uses. Also, the subject site has good and convenient access to public transport, being immediately accessible to direct local bus routes within Crown Street (via adjacent bus stops) and in close vicinity of the Wollongong Train Station (some 250m south-east).



**Figure 1: Subject Site Location (MMJ)**

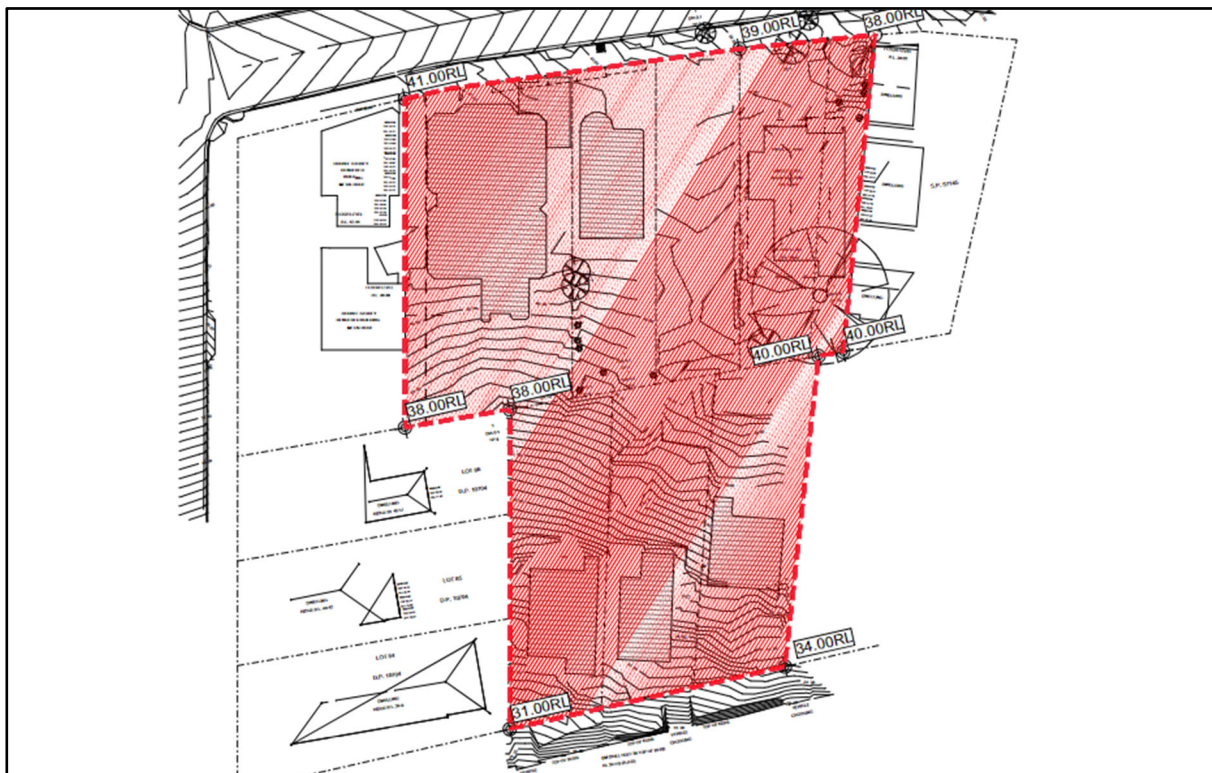
The site is not a heritage item or located within a heritage conservation area. The site is not adjoining or adjacent to any heritage items, although is within the vicinity of heritage items to the east (Moreton Bay fig WLEP 2009 Local Item 6290) and to the north-west within the Wollongong Hospital grounds (Group of fig trees and Nurses’ home WLEP 2009 Local Item 5939).





**Figure 2: Subject Site Immediate Aerial Context (Nearmap)**

The site is relatively free of any notable environmental constraints. A portion of the site fronts Crown Street which is a classified road, whilst street frontage access is also directly available to Parkinson Street. The site previously had multiple trees that have been removed under existing approval(s) and whilst demolition works are currently underway for existing buildings/structures. The most significant constraint for the subject site is its topographic profile and slope, to a grade level difference in the order of 10 metres across the site from the highpoint in Crown Street (RL 41.0 AHD) down to Parkinson Street (RL 31.0 AHD).



**Figure 3: Subject Site Profile (Urban Link)**



Vehicular access to the subject site is currently available from Crown Street. The proposed development will incorporate vehicle access primarily from Parkinson Street, with interconnected basements under both buildings. It is intended that access to be retained via Crown Street for the adjoining property at 385 Crown Street to the west (to which right of carriageway easements/restrictions exist). No part of the building and basement will encroach into this existing right of carriageway over Lot 7.

The subject property is sited on the highest peak of the Wollongong CBD area, nestled between the hospitals and the Crownview development, which are some of the largest and tallest building forms within the City Centre. At this location, the precinct allows for exceptional views of the CBD, the ocean and the Illawarra Escarpment.

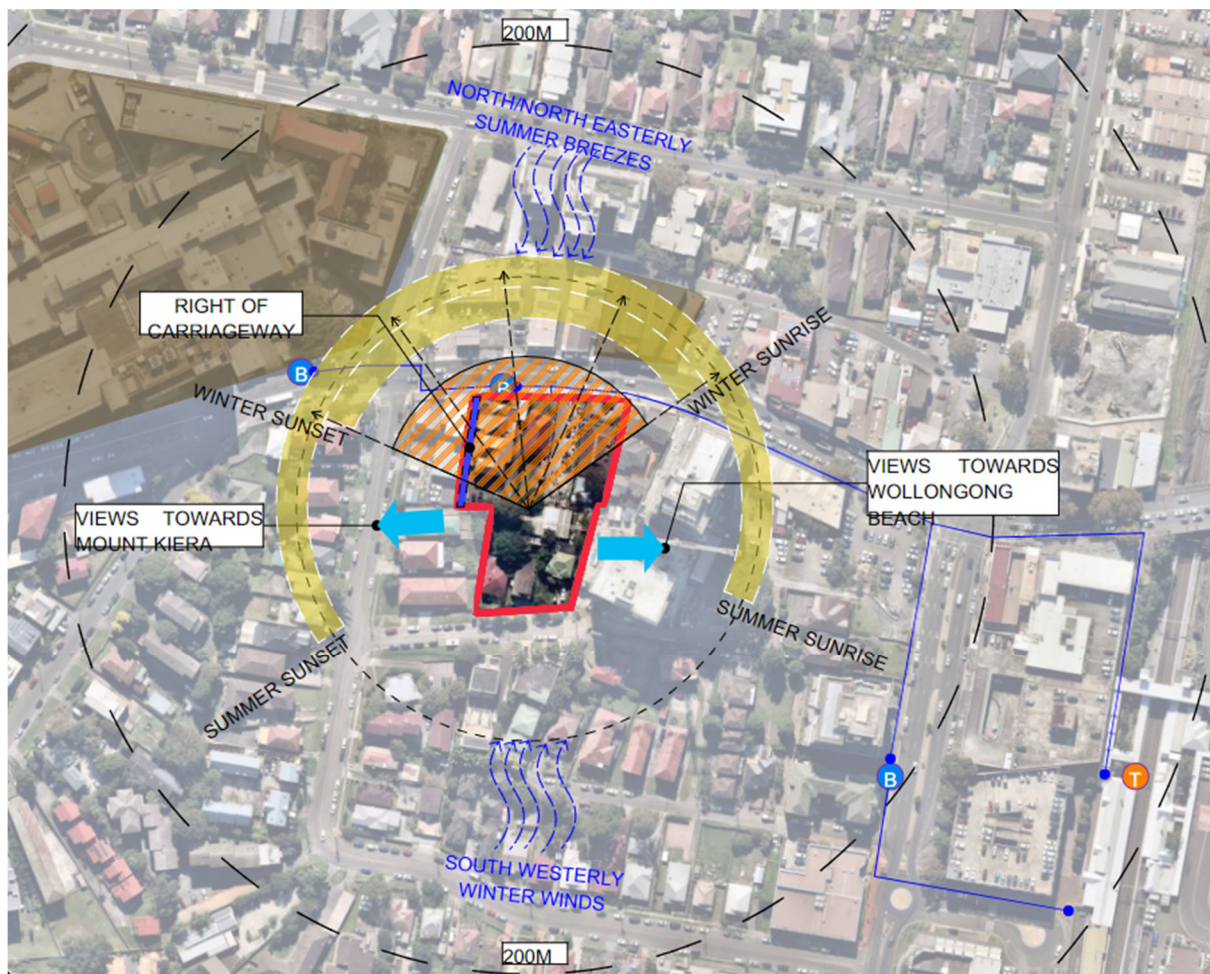


Figure 4: Subject Site Context (Urban Link)

Whilst the site is located within the Wollongong City Centre, the immediate locality is characterised by an ageing and disjointed urban environment undergoing various rates of change. A number of redevelopments are occurring within the area, replacing low scale commercial and residential properties with multi-storey mixed use developments, and health related facilities (given the proximity to the hospital).

The site is zoned E2 Commercial Centre, with the immediate context described below:



North	<i>SP2 Infrastructure and E2 Commercial Centre</i>	<i>Immediately opposite on the other side of Crown Street is a service station and fast food development (single storey), with primarily 2 storey commercial buildings fronting Crown Street towards the east (zone E2). Further north is a mix of lower and higher density residential buildings on Loftus Street (zone SP1)</i>
South	<i>R1 General Residential</i>	<i>A mix of 1, 2, and 3 storey residential buildings fronting both Parkinson Street and Osborne Street. Primarily residential and tourist accommodation.</i>
East	<i>E2 Commercial Centre</i>	<i>Existing 3 storey commercial buildings fronting Crown Street, incorporating shop top housing uses. Further to the east at 373 Crown Street (and adjoining the site on Parkinson Street) construction is nearing completion on a significantly larger scale proposal known as 'Crownview' and incorporating two towers of mixed use commercial/residential development (19 storeys and 8 storeys).</i>
West	<i>E2 Commercial Centre and SP1 Hospital</i>	<p><i>Existing 1, 2 and 3 storey buildings fronting Crown Street and Osborne Street, with various professional commercial and medical suites also throughout. Immediately adjacent to the west on Crown Street is a medical centre, which has recently undergone a series of alterations and additions improvements works. Adjacent further on the corner is an approved eight (8) storey hotel development which as been physically commenced. West of the Parkinson Street part of the site (fronting Osborne Street) is a series of residential dwellings and accommodation (zoned E2), which is benefited by existing use rights.</i></p> <p><i>Diagonally opposite to the north-west is the Wollongong Public Hospital precinct (some 9 storeys), with the completed Wollongong Private Hospital (some 8 storeys) another 300 metres or so to the west.</i></p>

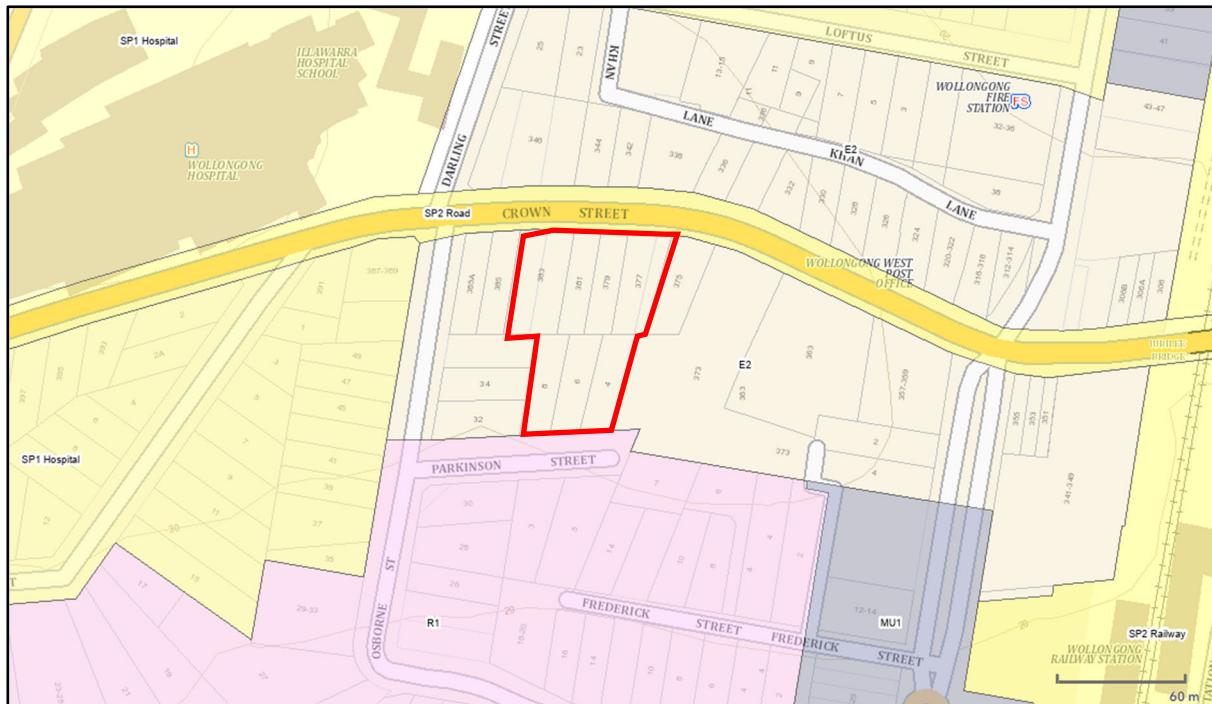


Figure 5: Zoning Map (NSW Planning Portal)

### Proposed development

The proposal is for the construction of a new multi-storey mixed use development. The proposal is detailed in the architectural drawings prepared by Urban Link. Key development details include:

- Construction of a new twenty (20) storey mixed use building consisting of 24,866sqm of commercial and retail space; plus ninety-three (93) residential apartments
- Parking for 384 cars, with additional bike (120) and motorbike (18) parking
- Associated communal spaces (internal and external), landscaping, services and stormwater drainage works.

The Crown Street properties will be developed in the form of a shop top housing building, whilst the Parkinson Street will be developed as a retail/commercial building. Pedestrian access will be available directly from both the Crown Street and Parkinson Street frontages, with a series of interconnected lobby spaces and arcades to manage permeability and access. Vehicular access will be from Parkinson Street only via interconnected basements.

The DA does not involve strata subdivision and/or signage.



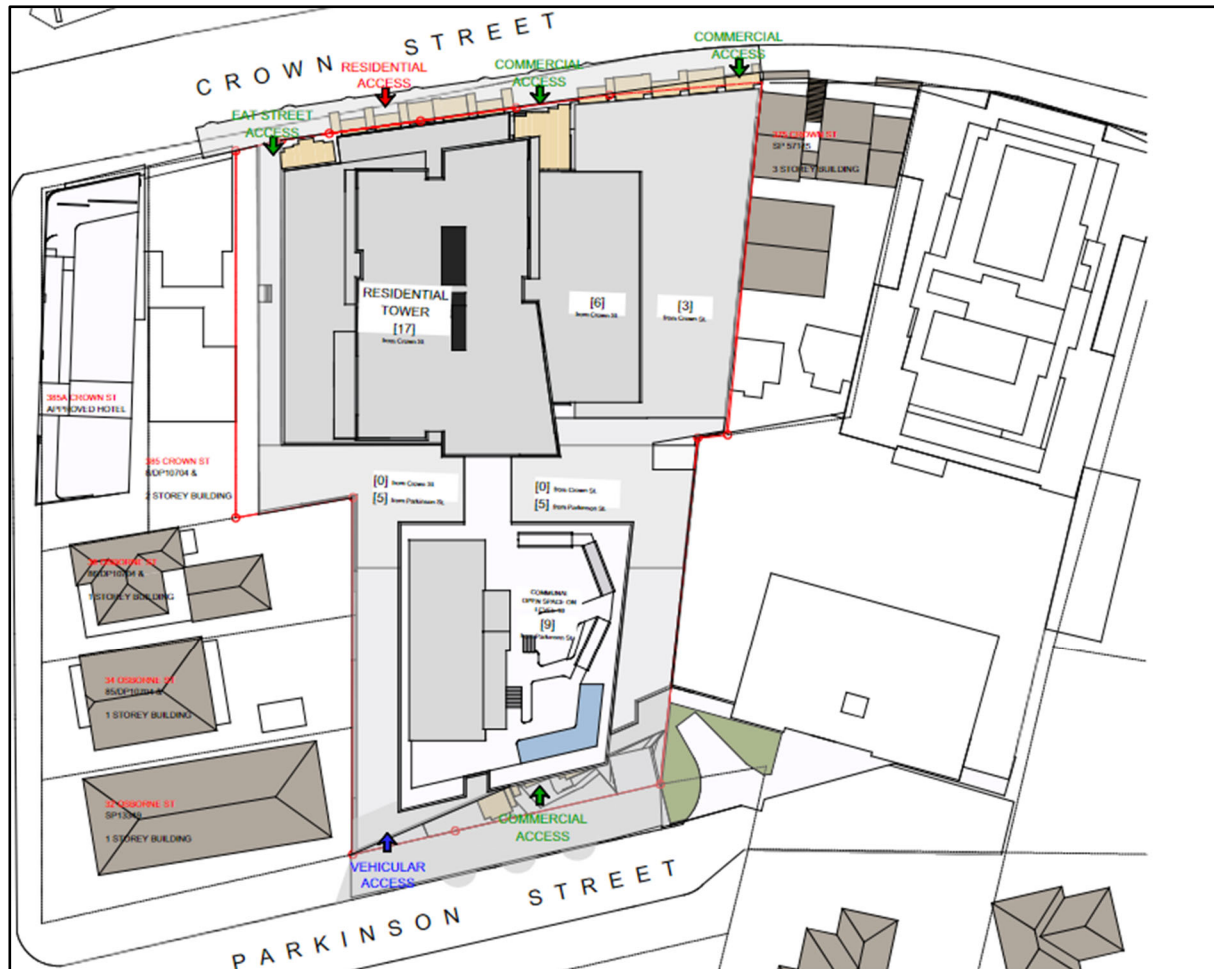


Figure 6: Site Plan (Urban Link)



Figure 7: 3D Perspective from Crown Street (Urban Link)

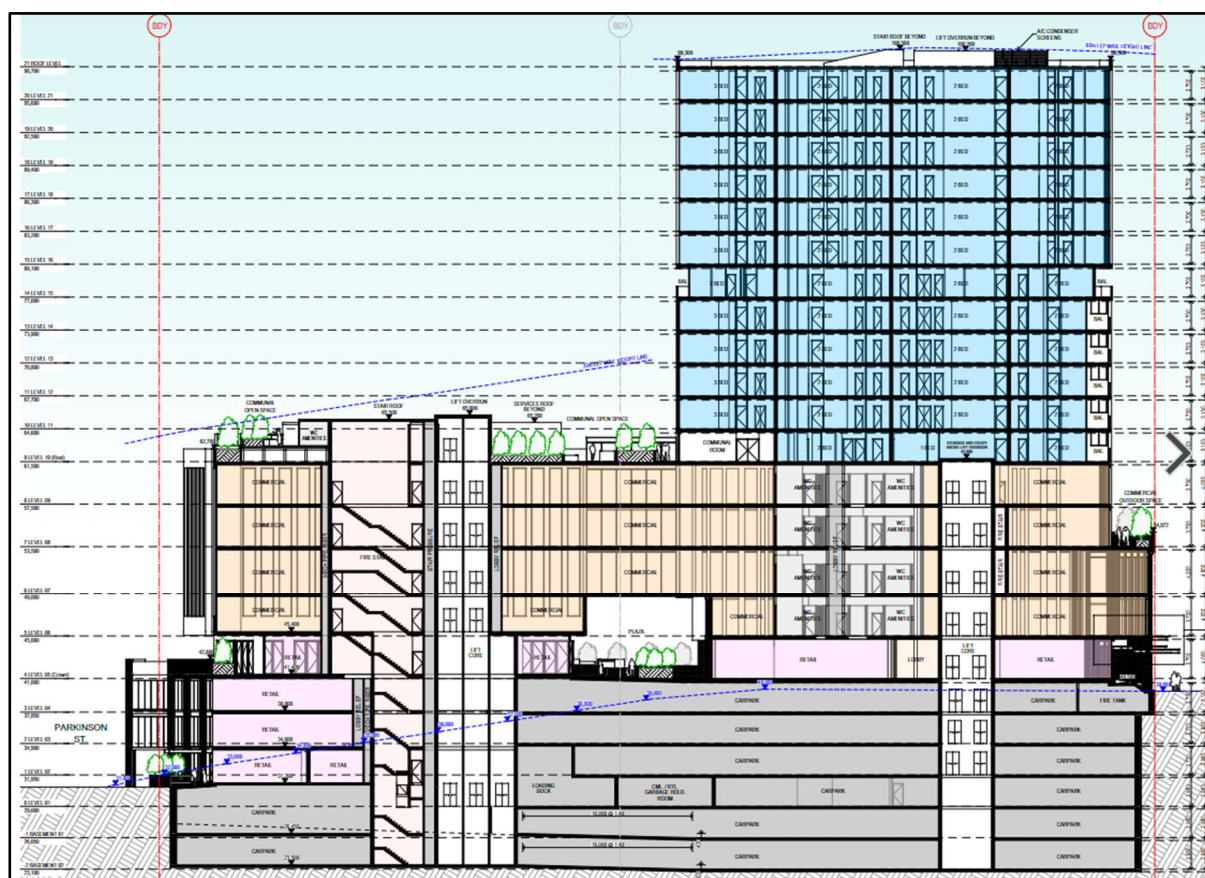


Figure 8: Site Section (north-south) (Urban Link)

### Applicable Environmental Planning Instrument & Development Standard

The applicable Environmental Planning Instrument subject to this Variation Request is the Wollongong Local Environmental Plan 2009. The subject site is zoned E2 Commercial Centre.

The 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. This Variation Request (exception to development standards) is seeking to vary the development standard Clause 8.6(2) and (3) of Wollongong Local Environmental Plan 2009 (WLEP 2009).

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 E2 Commercial Centre 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...”*

For the purposes of this Clause 4.6 Variation Request and in applying this development standard, it is important to note that the building separation requirements only relate to existing neighbouring buildings.

### Objectives of the Zone

The site is zoned E2 Commercial Centre and the proposed *shop top housing* land use is permitted with development consent and within this zone. The objectives of the E2 Commercial Centre zone are as follows:

- To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.*
- To encourage investment in commercial development that generates employment opportunities and economic growth.*
- To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.*
- To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.*
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- To encourage development that is consistent with the centre's position in the centres hierarchy.*
- To strengthen the role of the Wollongong city centre as the business, retail and cultural centre of the Illawarra region.*

### Objectives of the Development Standard

To satisfy the requirements of Clause 4.6 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.

The objective of this Clause 8.6 is as follows—

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

The expression ‘**development standards**’ is defined in section 4(1) of the EPA Act as follows:

*‘development standards’ means 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, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed. The key elements of a development standard are as follows: i. It must be a provision of an EPI or the regulations made under the EPA Act (thus excluding, among other things, a DCP). ii. The provision must be one 'in relation to' the carrying out of development. iii. The provision must be one by or under which one or more requirements are specified, or one or more standards are fixed, in respect of any aspect of that development. In this regard, the minimum site area requirement pursuant to cl. 4.1E(4) is a development standard as it prescribes a specified minimum site area standard for the erection of a dual occupancy.*

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe), Chief Justice Preston stated that

*“Development standards are not an ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieving anyway) and unreasonable (no purpose would be served)”.*

This Clause 4.6 Variation Request demonstrates how the proposed development achieves the ends (environmental or planning objectives), despite its departure from the means (development standard).

### **Description of the Variation**

Clause 8.6 seeks to ensure sufficient separation of buildings for visual appearance, privacy and solar access reasons. To this end, the proposed development incorporates building setbacks to the neighbouring buildings as follows:

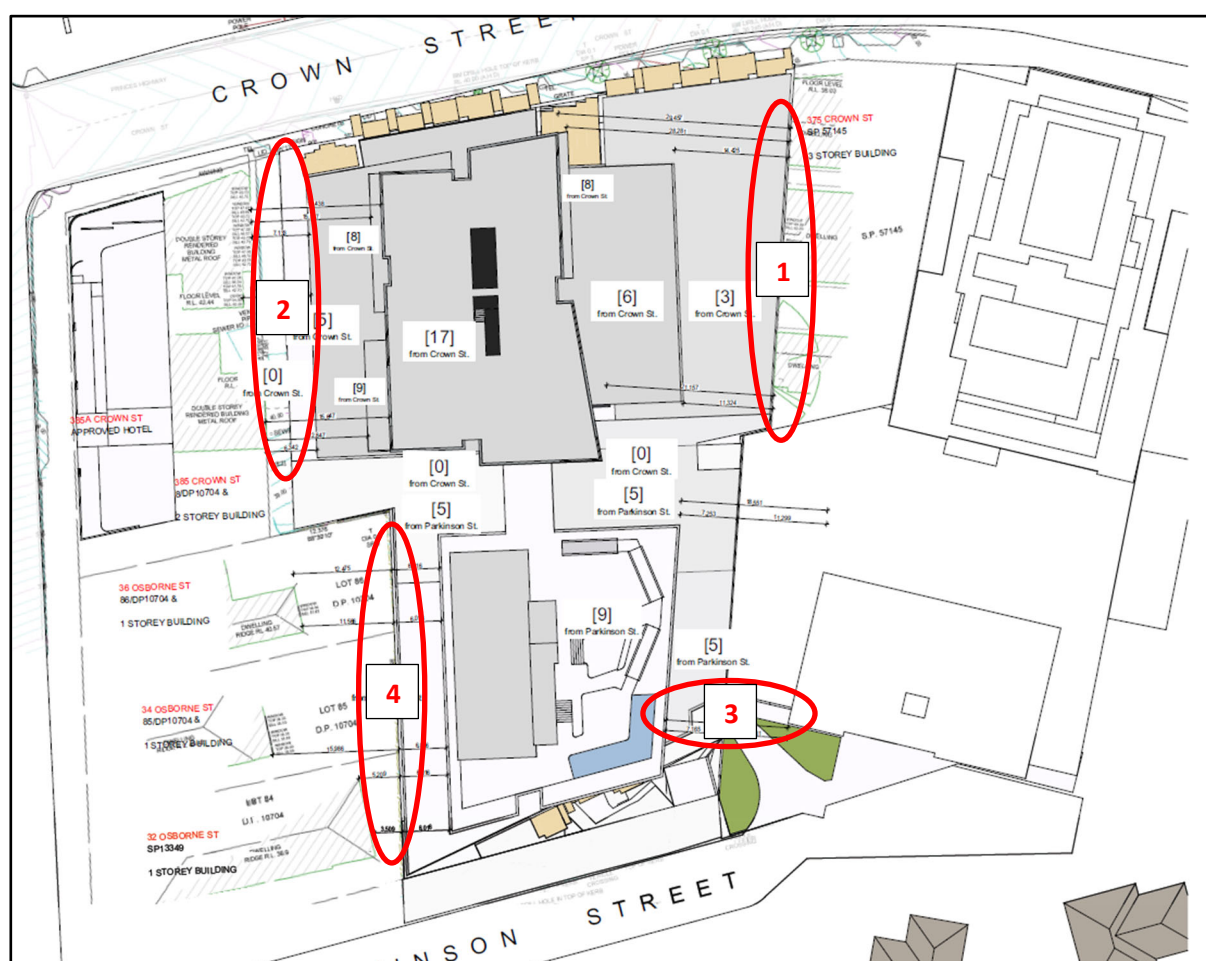


Boundary / Neighbouring Building	Corresponding Proposed Development Level(s)	Development Standard (interface)	Building Separation Proposed	Compliance	% Variation
Crown Street Tower (podium = Level 8)					
EAST					
375 Crown St East (commercial ground level)	Level 4 (commercial)	0 metres (commercial to commercial)	0 metres	Yes	
375 Crown St East (residential levels 1-2)	Level 5 (commercial)	16 metres (commercial to residential)	0 metres	No	% N/A
375 Crown St	* No existing building above 3 storeys				
373 Crown St East (commercial level)	Level 6 (commercial)	12 metres (commercial to commercial)	18.6 metres	Yes	
373 Crown St East (residential level)	Level 7 (commercial)	16 metres (commercial to residential)	22.6 metres	Yes	
373 Crown St East (residential levels)	Levels 8-9 (commercial)	16 metres (commercial to residential)	34.1 metres	Yes	
373 Crown St East (residential levels)	Levels 10-14 (residential)	20 metres (residential to residential)	44.5 metres	Yes	
373 Crown St East (residential levels)	Levels 15-17 (residential)	20 metres (residential to residential)	46.1 metres	Yes	
373 Crown St East (residential levels)	Levels 18-20 (residential)	28 metres (residential to residential)	46.1 metres	Yes	
WEST					
385 Crown St West (commercial ground level)	Level 5 (commercial)	0 metres (commercial to commercial)	7.8 - 10 metres	No (strictly applied a zero setback is required)	% N/A
385 Crown St West (commercial level 1)	Level 6 (commercial)	0 metres (commercial to commercial)	6.3 – 8.5 metres	No (strictly applied a zero setback is required)	% N/A
385 Crown St	* No existing building above 2 storeys				
Parkinson Street Tower (podium = Level 5)					
EAST					
373 Crown St East (commercial levels 1-2)	Levels 1-3 (commercial)	0 metres (commercial to commercial)	0 metres	Yes	
373 Crown St East (residential level)	Level 4 (commercial)	16 metres (commercial to residential)	8.2 metres	No	48.7%
373 Crown St East (residential level)	Level 5 (commercial)	16 metres (commercial to residential)	16.4 metres	Yes	
373 Crown St East (residential level)	Levels 5-9 (commercial)	16 metres (commercial to residential)	15.4 metres	No	3.75%
WEST					
32 Osborne St West (residential dwellings single storey)	Level 1 (commercial)	16 metres (commercial to residential)	3.5 – 5.2 metres	No	78.2%



34 Osborne St West (residential dwelling single storey)	Level 3 (commercial)	16 metres (commercial to residential)	15.98 metres	No	0.13%
36 Osborne St West (residential dwelling single storey)	Level 3 (commercial)	16 metres (commercial to residential)	11.5 – 12.4 metres	No	28.1%
32 Osborne St 34 Osborne St 36 Osborne St	* No existing building above 1 storey				

The below extracts of the Architectural Plans prepared by Urban Link generally show these boundary setback/building separation conditions to the eastern and western sides.



Effectively, the critical reasoning for the variations proposed to the relevant development standards are:

- **Variation 1: 375 Crown Street (Crown Street East):** Clause 8.6(2)(a) generally requires there is no separation between neighbouring buildings up to the street frontage height. However, the neighbouring buildings (shop top housing) incorporate residential dwelling façades (2 x levels) presently built to the common boundary. If an adjoining building contains a dwelling, then under Clause 8.6(3)(b) all habitable parts of that



dwelling must not be less than 16 metres from another building. The design street character for the Wollongong city Centre promotes built to boundary façades up to the podium level, which is proposed in this instance. This façade incorporates no openings and provides for a non-habitable interface. To incorporate a 16 metre setback at the street in a face to accommodate such a building separation develop in standard does not promote the orderly and economic development of the land, nor desired streetscape character.

- *Variation 2: 385 Crown Street (Crown Street West):* The interface with 385 Crown Street at the lower podium levels requires a zero metre setback to this common boundary (as above), however, this is not possible with the existing easement(s) in place along this edge. With this in mind, a further setback is proposed at this interface (again strictly zero is required) to provide some physical and visual relief to this edge, given a built to boundary streetscape is not legally possible. The commercial to commercial interface is appropriate on planning grounds, as there will be no privacy or visual affectation created at these lower levels to warrant any greater building separation.
- *Variation 3: 373 Crown Street (Parkinson Street East):* In relation to the Parkinson Street Tower, the podium for the proposed development is set at slightly higher than that of the adjoining podium for the rear tower building at 373 Crown Street adjacent. This means effectively that the first few levels of commercial built to boundary comply where it interfaces with the adjoining commercial podium, however, at Level 4 of the proposed development the built to boundary commercial space interfaces with the residential tower above the podium on the adjoining site. As above, where commercial interfaces with residential, a minimum building separation of 16 metres is required (only 8.2 metres achieved at that level). This is deemed acceptable given the communal open space interfaces between the two developments, which is unlikely to create any notable privacy and/or visual impacts. Above the podium for levels 5 to 9, the commercial building interfaces with the residential tower adjacent and includes a 15.4 metres setback at the southern tangent point – rather than 16 metres minimum. For similar reasons, this setback interface and building separation is considered acceptable given the minor non-compliance at a very small portion of the building.
- *Variation 4: 32, 34 and 36 Osborne Street (Parkinson Street West):* the properties to the west along Osborne Street are undeveloped and incorporate residential dwellings benefited by existing use rights. It is likely that the subject site(s) will be redeveloped in future for similar purposes to that proposed within this development, meaning it will be expected that some form of commercially orientated built to boundary podium streetscape is desired. Any redevelopment of that site in the form of shop top housing will likely include a tower form presented to the street corner/edge, at heights above the street wall podium. Therefore, it is not likely that this proposed reduced setback will restrict the ability for these sites to be developed for residential purposes in future either. Regardless, until such time the façade treatment along this edge will be a non-habitable interface, which will not incorporate any privacy or overlooking issues to these existing residences.



### **How is compliance with the development standard 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 Development Standard (First Way):**

Under WLEP 2009, Clause 8.6 has the following objectives in relation to the building separation within Zone E2 Commercial Centre or Zone MU1 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 majority of variation elements proposed to the building separation development standards in this instance are at the lower Street/podium levels, relate to either existing residential boundary interfaces (existing underdeveloped sites) or legal constraints (for example easement along the western boundary to Crown Street). In all cases, the proposed development has been prepared mindful of respecting these existing boundary conditions, but at the same time providing a desired streetscape outcome consistent with contemporary urban design controls and character.

The building facade to Crown and Parkinson Streets 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 podiums and towers 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.

Consideration has been made to all façades where walls are articulated with texture and pattern to mitigate any blank walls. Various window elements have been used to each elevation to create visual interest to these edges, when viewed from various angles surrounding.

Selected quality, modern, durable and environmentally sustainable external finishes ensure 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 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.

### **‘Privacy’**

Privacy has been considered specifically in the design response shown in the architectural interface treatment to these corresponding side boundaries to the western and south-western elevations.

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 helps maintain such visual separation. 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.

The proposed development will result in the redevelopment of the central portion of the wider street block. The surrounding site's have been taken into consideration in the design of this development and are represented on the architectural plans by Urban Link.

Notwithstanding, the building intrusions into the eastern and western side setbacks are a direct design response with the intent to allow the site to respond to the demand for commercial premises and housing in the area, whilst supporting Wollongong Council's objectives for built form within the City Centre.

Through smart design treatments responding to habitable v non-habitable interfaces, the proposed building separation largely complies with the minimum required separation distances identified within the Apartment Design Guide (ADG), 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.

### **‘Solar access’**

The layout and tower design are a direct response to the site's orientation. The apartments aspects being used for primary living spaces are orientated north, east and west where possible to maximise solar access 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 (but at the same time limit privacy interface issues).



An ADG Compliance table has been provided by Urban Link and is attached to the DA submission package for Council's consideration. 84% of the residential apartments receive a minimum of 2 hours sun to living area glazing and private open space in midwinter. The ADG design criteria nominates only 70% as a minimum and therefore the ADG design criteria for solar access are fully satisfied.

The planning assessment and architectural plans also demonstrate that the roof top level COS area will receive the required solar access. Thus, adequate area of COS is provided to enhance residential amenity and provide good opportunities for landscaping.

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 Variations (Fourth Way)**

In relation to the 'Fourth Way' and considerations for whether 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 approvals have proposed the similar exceedances:

*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*

*DA-2022/14: 24-30 Kenny Street, WOLLONGONG*

*Demolition of existing building /structures and construction of an 18 storey mixed use development including hotel*

*DA-2022/320: 17-19 Gladstone Avenue, WOLLONGONG*

*Demolition of the existing structures and construction of a new 9 storey residential flat building comprising 35 residential apartments, 3 levels of basement parking, communal space, elevated deck area, landscape embellishment works and stormwater drainage*

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 (now SEPP Housing) 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:

- **Design Excellence:** Adopting building separation requirements to the east and west would mean a part of the subject site (at the lower levels) would be excluded from any reasonable built form, and result in significant streetwall gaps along both street frontages. The variation results in a better urban design outcome for the site in terms of the redistribution of bulk across the land and reinforcing the streetwall character, having regard to the site's location on prominent roads within the City Centre, existing streetscape and applicable controls.
- **Contextual Considerations:** The response to the streetwall gap that must be created along the Crown Street frontage (western side – due to legal easement(s) in place) has been managed with a design response for improved public domain outcomes at the streetscape level, creating a new site link/plaza west of the ground floor and opening up view lines and land use activity opportunities between sites.
- **Economic Viability:** The proposed design has been massaged to integrate various built form interfaces and levels on the site, so that it can be redeveloped as a whole – promoting the orderly and economic use of the land. Strict adherence to the standard would reduce floorspace unnecessarily and render the development economically unviable.
- **Urban Renewal Objectives:** The scale of the development is considered appropriate within the strategic planning context of the E2 Commercial Centre zone and is consistent with the relevant zone objectives. The proposal satisfies the objective in relation to the building separation intent contained within Clause 8.6 of the *WLEP 2009*.
- **Community Benefits:** Non-compliance with the standard will not result in any adverse environmental impacts. The variation enhances public amenity by providing additional housing and floor space opportunities, activating ground-level spaces, or improving pedestrian engagement and activation of the public domain. Also, the development promotes significant direct and indirect economic benefits for immediate locality, and economic viability of City Centre.

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 commercial space and residential dwellings to support the ongoing economic objectives for the Wollongong City centre and meet the needs of the local community. The development is consistent with the underlying intent of the development standard as noted, and the objectives of the E2 Commercial Centre zone as follows:

- *To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.*  
The land uses proposed are conducive to the commercial centre environment, and will revitalise this part of the City Centre. Residential accommodation will attract people to support business and retail, and the public domain and streetscape outcomes with strengthen both community and cultural activity.
- *To encourage investment in commercial development that generates employment opportunities and economic growth.*  
The proposed development will be a significant investment that generates employment.
- *To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.*  
The proposed development is in a highly accessible location and will incorporate various mixed uses with equitable access opportunities at all levels. Disabled access will be available through the development from the Crown Street frontage to the Parkinson's street frontage (and vice versa), with high levels of amenity provided throughout.
- *To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.*  
The proposed development 93 new residential apartments, together with communal spaces, consistent with Council's strategic planning for high density residential in the area. The proposed unit mix will cater for a range of demographics and price points within the market to encourage all types of occupants (either rental or owner occupier arrangements).
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*  
The new development promotes a mix of uses that will activate the local streets and attract pedestrian traffic. The upgrades to the public domain, together with reverse podium designs and active entries that invite the public into the private domain will further enhance the vibrancy of place.
- *To encourage development that is consistent with the centre's position in the centres hierarchy.*  
The site is at an iconic location within the high point of the City Centre, and the development will complement the City Centre's hospital precinct. The land uses





are ideal for the site's position in the centre's hierarchy surrounded by medical, retail and business activities.

- *To strengthen the role of the Wollongong city centre as the business, retail and cultural centre of the Illawarra region.*

As above, this project will be a significant investment for Wollongong City Centre and will include a mix of uses, and at the same time replace redundant buildings and land uses with new contemporary and iconic built form. This will provide for much needed residential and office accommodation to support this precinct as the business, retail and cultural centre of the Illawarra region.

### **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 EP&A Act 1979.

### **Conclusion**

This Clause 4.6 Variation Request has been prepared to support a development application for at this development Lot 81, 82 and 83 DP 10704, and Lots 3, 4, 5, 6 and 7 DP 10704, and Lot 10 DP 309092, 4-8 Parkinson Street and 377-383 Crown 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 Clause 8.6 development standard is both unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify varying the standard in this instance.