

APPENDIX

D

CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS STATEMENT - SEPARATION

1 Introduction

This report comprises a Clause 4.6 Variation Statement for the proposed Mixed-Use development at 116-120 Corrimal Street, Wollongong (Lot 1 DP552579, Lot 2 DP150697, Lot 3 DP150697, Lot 1 DP58423 and Lot 1 DP799074).

In particular it addresses non-compliance of the proposal with “**Clause 8.6 – Building Separation within Zone B3 Commercial Core or Zone B4 Mixed Use**” of Wollongong Local Environmental Plan 2009 (WLEP). This revised Variation Statement has been prepared in support of the Statement of Environmental Effects (SEE) for the proposed development and specifically addresses amended plans prepared by ADM Architects, Issue B, dated 8 March 23, which provide for increased setbacks to the northern boundary.

A detailed description of the proposed development can be found within the Statement of Environmental Effects.

This report contains the following structure:

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

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

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

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

Section 6 - Conclusions

2 Clause 4.6 of WLEP 2009

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

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

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

The objectives of Clause 4.6 are as follows:

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

This statement is provided in order to justify a variation to Clause 8.6 ‘Building separation within Zone B3 Commercial Core or Zone B4 Mixed Use’ under the following provisions of WLEP 2009. In accordance with Clause 4.6 of the WLEP, this report has been prepared to provide evidence that the application of these requirements is considered unreasonable or unnecessary for this particular development.

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

The objective of Clause 8.6 of the WLEP is to:

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

Requirements of Clause 8.6 include the following criteria:

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

This clause applies to the proposed mixed-use development as it is located in the B4 Mixed Use zone of WLEP 2009. A summary of the buildings that are located on an adjacent boundary to the proposed development have been incorporated into this report and summarised in the table below:

Table 1: Summary of Land Use/Buildings on Adjacent Lots

Lot DP	Property Address	Property Name/Business	Land Use	Elevation to Subject Site
Lot 101 DP 1121859 SP 80101-80103	19 Market Street, Wollongong	Adina Apartments	Commercial Ground Floor Level Residential at Levels 5 to 9 Serviced apartments at other levels	Northern façade
DP 90947	124 Corrimal Street, Wollongong	The Harp Hotel	Commercial	Southern façade
Lot 1 DP 711968	86 Crown Street, Wollongong	NSW Government	Commercial	Western façade
Lot 1 DP 127333	12 Moore Lane, Wollongong	Downtown Motel	Short Term Accommodation	Western façade

4 Discussion of Compliance with Clause 8.6 of WLEP 2009

4.1 Summary of Separation Distances

The proposed eleven (11) storey building contains a commercial tenancy at the Ground Level and residential apartments at Levels 1 through to 10. For the purpose of this clause, the street frontage height of the building is determined to be the Ground Level and Level 1.

In accordance with Clause 8.6 the following separation distances are required:

- > Nil setback at the Ground and Level 1 as per clause 8.6(2)(a)
- > 16m separation from the State Office Block/Downtown Motel to the west at Levels 2 to 10 as per clause 8.6(3)(b)
- > 16m separation from the Harp Hotel to the south at Levels 2 to 10 as per clause 8.6(3)(b)
- > 20m separation from the Adina Apartments (which include serviced apartments and residences) to the north at Levels 2 to 10 as per clause 8.6(3)(a)

The following confirms the manner in which the various levels of the building will comply with clauses 8.6(2) and 8.6(3).

Below Street Frontage Height

- > *Ground Level and Level 1 – nil separation required:*
 - North: Nil separation to the northern boundary at Ground Level and nil separation from the wrap around brick blade wall and terrace at Level 1, in compliance with the requirements of this clause (noting that the adjacent building to the north is non-compliant as it provides separation from the common boundary) - *Compliant*.
 - South: 6m+ to the adjacent building to the south to allow for proposed laneway – *Variation Sought*.
 - West: Approx 7.47m separation provided to the rear (increasing to 18.13m to the Level 1 units) to allow for extension of the laneway and rear vehicular access – *Variation Sought*

Above Street Frontage Height

- > *Levels 2-9:*
 - Northeast: 8.66m to 10.77m separation at Levels 2-9 to balconies in the adjacent building containing serviced and residential apartments to the north - *Variation Sought*.
 - Northwest: 6.0m separation from the Level 2-10 apartments to the adjacent building to the north – *Variation Sought*
 - South: Min 6.0m separation to the adjacent commercial building (Harp Hotel) to the south – *No building interface at this level*.
 - West: Min 17.0m separation to the adjacent commercial buildings to the west – *Complies*
- > *Level 10:*
 - Northeast: 14.35m separation from the trafficable balcony to the adjacent building containing serviced and residential apartments to the north – *no building interface at this level*.
 - Northwest: 5.8m separation from communal open space terrace to the adjacent building to the north – *no building interface at this level*.
 - South: 6.0m to 13.26m separation to the adjacent commercial building (Harp Hotel) to the south – *no building interface at this level*.
 - West: 17m separation to the adjacent commercial buildings to the west – *Complies*.

The following discussion captured in Section 4.2 addresses non-compliance with the provisions of clause 8.6 with respect to the following separation distances:

- Ground Level and Level 1 separation to the west and south which does not provide the required nil separation to the Harp Hotel, Downtown Motel and State Government office building [Clause 8.6 (2)(a)].
- The required 16m separation distance for Level 2 [Clause 8.6 (3)(b)] to the 2-storey commercial building (Harp Hotel) at 124 Corrimal Street to the south, with separation of 6.0m or greater (with no building interface above this level).
- The required 20m separation distance for Levels 2-9 [Clause 8.6 (3)(a)] to the 9-storey residential and serviced apartment building (Adina Apartments) at 19 Market Street to the north. This concerns the interface between the residential units on the northern side of the proposal with the building adjacent. The separation is approximately 8.66m to 10.77m at Levels 1-9, with no interface at Level 10 as shown in **Figure 4.1**.

4.2 Analysis of Separation Distances to Adjacent Building to the North

The building immediately north of the site is No. 19 Market Street (Adina Apartments). This site includes a mixed use 9 storey building which is comprised of commercial tenancies on the Ground Floor, residential apartments at Levels 5-9 and short term serviced apartment accommodation at other levels. This site shares the boundary with the proposed building for a length of approximately 23m and has an interface to Level 9 of the proposed building. This shared boundary means that no separation is required at the Ground Floor and Level 1 (Street Frontage Height) with the building to the north and ground level separation is therefore compliant with Clause 8.6(2)(a) of the WLEP.

The Adina serviced apartments and residential units are adjacent to Levels 1-9 of the proposal. Separation between the proposal and this building is typically in the order of 8.66 to 8.8m at Levels 1-4, measured from the outer edge of the balconies in the Adina building. Separation increases at Level 5-9 to typically 9.66m to 10.77m, with no interface at Level 10. These separation distances do not comply with Clause 8.6(3)(a) and require a variation to be sought in accordance with Clause 4.6 of the WLEP.

4.3 Analysis of Separation Distances to Adjacent Buildings to the West

To the west of the subject site is No. 86 Crown Street and No. 12 Moore Lane, which contain a two-storey motel (Downtown Motel) and a three-storey commercial building (NSW Government Services).

Both buildings are separated from the proposal by Moore Lane at the Ground Floor and Level 1 (Street Frontage Height). Due to the presence of the existing laneway between the proposal and buildings to the west, subclause (2)(a), which requires zero separation, is not met in this instance.

Level 2 which has a floor level of 16.750RL, meets the neighbouring building, with the Downtown Motel and NSW Government buildings adjacent at Level 2 floor level. Separation between the proposal and these buildings is 17.00m which is achieved for both buildings and complies with Clause 8.6(3)(b).

Level 3 which has a floor level of 19.850RL, meets the neighbouring building at 86 Crown Street only due to the Downtown Motel being a 2-storey building. Separation between the proposal and this building is approximately 16.84m and complies with Clause 8.6(3)(b).

All levels above Level 3 have no adjacent building interface to the west.

4.4 Analysis of Separation Distances to Adjacent Buildings to the South

To the south of the subject site is No. 124 Corrimal Street, which contain a two-storey hotel (The Harp Hotel). This building will be separated from the proposal by Moore Lane at the Ground Floor and Level 1 (street frontage height). Due to the presence of the existing laneway between the proposal and buildings to the west, subclause (2)(a), which requires zero separation, is not met in this instance.

All levels above Level 1 have no adjacent building interface to the south.

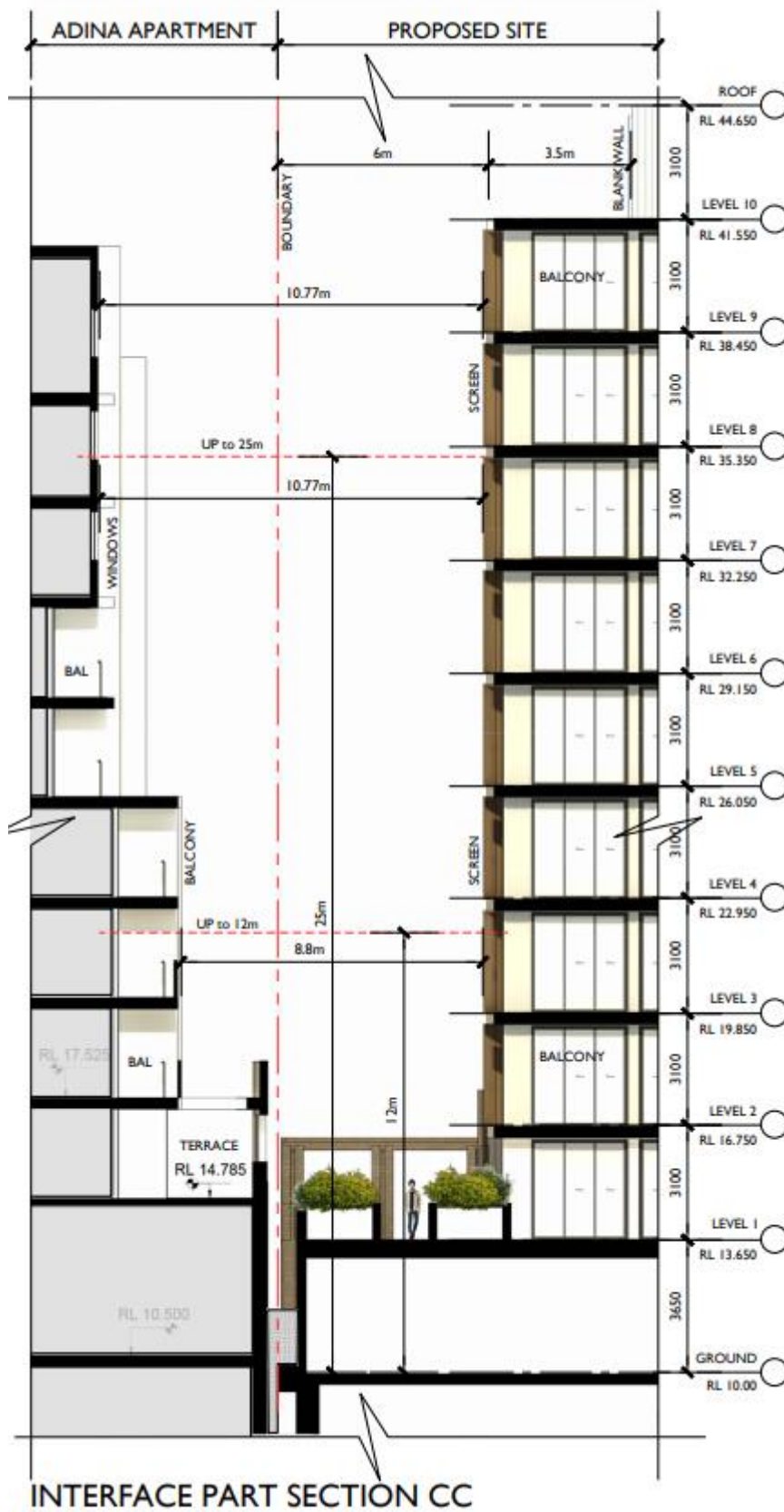


Figure 4-1 Interface Section prepared by ADM Architects showing separation between the proposed building and the Adina building to the north.

4.5 Separation to Possible Future Development on Adjoining Sites

Clause 8.6 of WLEP 2009 does not specifically refer to the need to consider 'future' buildings in the analysis of building separation. However, for the avoidance of doubt, consideration has been given to the separation which could be provided to future development on adjacent sites to the south.

The Built Form Study prepared by ADM Architects (Drawing A-007 Issue B) demonstrates the separation which will be achieved to future development on adjacent sites and demonstrates that an adequate spatial separation can be provided.

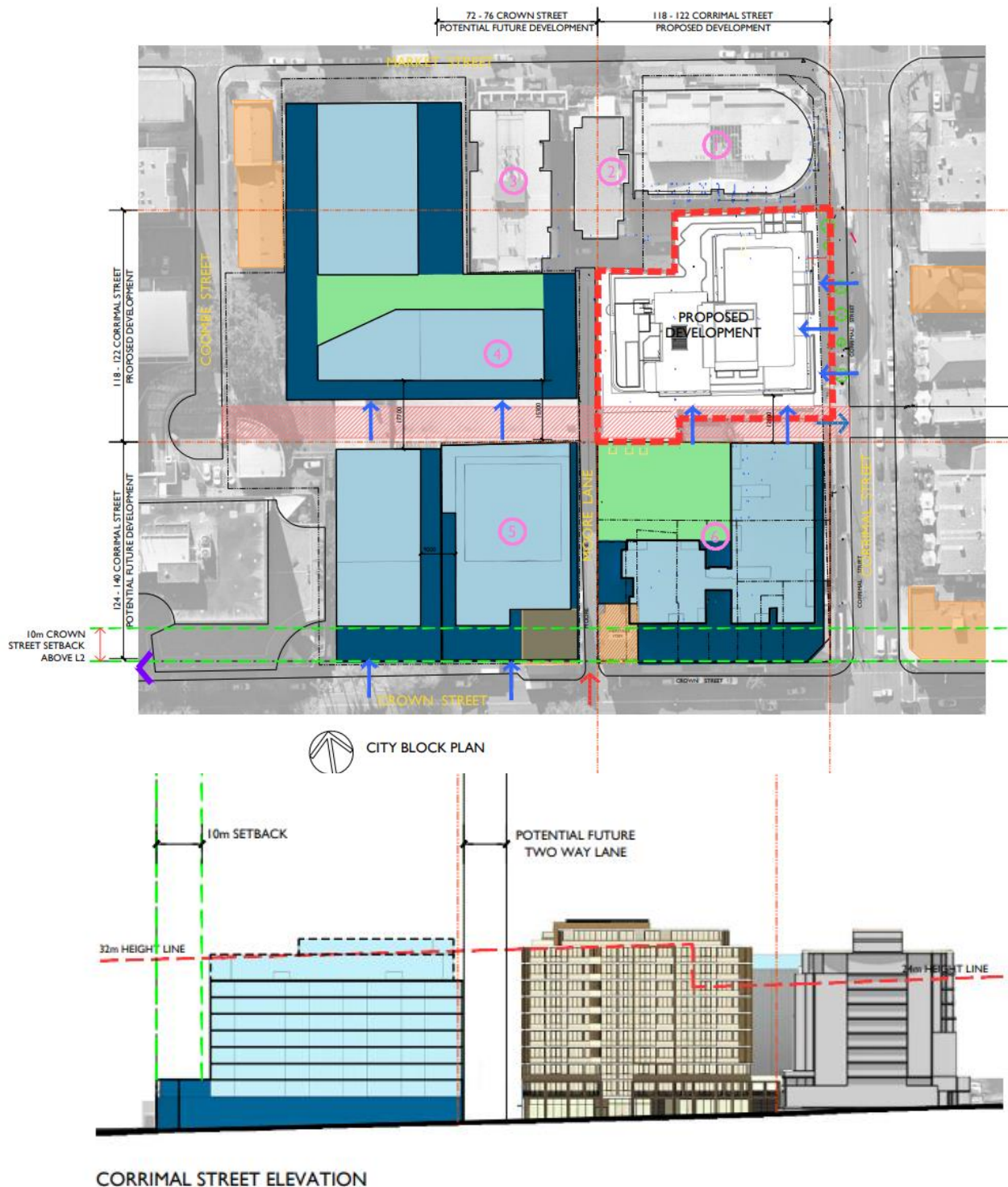


Figure 4-2 Extract of Built Form Study prepared by ADM Architects showing separation to possible future buildings

5 Clause 4.6 - Exceptions to Development Standards Report

Clause 8.6 of WLEP 2009 contains development standards in the form of minimum separation distances adjoining buildings. A written justification for the proposed variation to the building separation controls is therefore required in accordance with Clause 4.6. **Table 5-1** below outlines how the proposal relates to the provisions of Clause 4.6 as it applies to the contravened development standards in Clause 8.6 of the WLEP.

As indicated above, this Statement seeks variation to the following separation distances:

- Ground Level and Level 1 separation to the west and south which does not provide the required nil separation to the Harp Hotel, Downtown Motel and State Government office building [Clause 8.6 (2)(a)].
- The required 20m separation distance for Levels 2-9 [Clause 8.6 (3)(a)] to the 9-storey commercial building (Adina Apartments) at 19 Market Street to the north. This concerns the interface between the residential units on the northern side of the proposal with the building adjacent. The separation is approximately 8.66m to 10.77m at Levels 1-9, with no interface at level 10.

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

Table 5-1 Compliance with WLEP 2009 - Contravention of Clause 8.6 Building Separation in the B4 Mixed Use Zone

Clause 8.6 Exceptions to Development Standards	Response/Justification	Outcome determined
<p>(1) Objectives</p> <p>a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and</p> <p>b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p>	<p>Flexibility is sought for the application of building separation requirements in the following locations:</p> <ul style="list-style-type: none"> ▪ Levels 1-9 (to the north of the proposal). ▪ Ground Level and Level 1 to the west and south to allow for the laneway access. <p>The particular circumstances for each of these locations and how this variation will achieve a better outcome for the site are described below:</p> <p>South and West (Ground Level and Level 1):</p> <ul style="list-style-type: none"> ▪ In line with the Design Review Panel comments, the incorporates the following elements into the proposal to improve the built form and scale of the building, these design changes include: <ul style="list-style-type: none"> ○ Design of the structure into an “L” shape tower (improving use of communal space for residents and reducing potential solar and shadowing impacts) on surrounding buildings. ○ Development of a new lane to be incorporated into the existing access/egress of the site in conjunction with Moore Lane will improve connectivity between the proposal and the surrounding road/pedestrian network while also reducing volume of traffic to and from Corrimal Street. The construction of this new lane as well as the improvements to the design have necessitated separation along the southern boundary, thereby resulting in the non compliance with the ‘nil separation’ requirement at Ground Level. ○ The provision of an ‘open air’ lane has resulted in non compliance at Level 1, however this ‘open air’ 	Justified

Clause 8.6 Exceptions to Development Standards	Response/Justification	Outcome determined
	<p>configuration will provide significant traffic, community and urban design benefits.</p> <p>Hence, it is considered that the objective of this clause is addressed.</p> <p>North (Levels 1-9):</p> <ul style="list-style-type: none"> ▪ The design of apartments along the northern façade incorporates privacy treatment including louvered windows and balcony screens, as per the recommendations of the DRP. These apartments face the east and west respectively and maintain consistency with the ADG. ▪ The design (amended from the current valid consent) places the building further to the south of the block. The revised plans (Issue B) have further increased separation distances along the northern façade. This has allowed for the incorporation of the following improved design outputs: <ul style="list-style-type: none"> ○ Provision of a new laneway (extension of Moore Lane) along the southern boundary (providing greater access/egress options to the surrounding area rather than one access/egress via Crown Street). ○ Increased solar access to the surrounding buildings including 19 Market Street along the northern façade. ▪ The Development Application has also incorporated Lot 1 DP 152199 (currently 116 Corrimal Street). The use of this portion of land in the updated design of the building (not used in DA No.2004-564) has allowed for the redesign of the building, incorporating a site which would otherwise become an isolated lot. ▪ The use of Lot 1 DP 152199 as part of this proposal allows for the incorporation of this land parcel into a development that is consistent with the streetscape of the existing and proposed development along the western side of Corrimal Street. <p>North (Level 10):</p> <p>There is no immediate building interface between the proposed development and the Adina building at Level 10.</p> <p>Hence, it is considered that the objective of this clause is addressed.</p>	
<p><i>(2) Consent may, subject to this clause, be granted for development even though the development may contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.</i></p>	<p>This subclause is not relevant to the subject proposal.</p>	<p>N/A</p>
<p><i>(3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a</i></p>	<p>This table comprises the written request seeking to justify the contravention of the building separation development standard.</p>	<p>Provided</p>

Clause 8.6 Exceptions to Development Standards	Response/Justification	Outcome determined
<i>written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:</i>		
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	<p><i>In Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009, para 61, Commissioner Person summarises the considerations from Wehbe v Pittwater Council [2007] NSWLEC 827 at [42] per Preston CJ, and notes in para 62 that clause 4.6 can be considered in a similar way to that of SEPP 1. In Wehbe at [44]-[48] Preston CJ identified other ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary, namely that the underlying objective or purpose is not relevant to the development; that the objective would be defeated or thwarted if compliance was required; that the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard; or that the zoning of the land is unreasonable or inappropriate.</i></p> <p>A response to each of these approaches is therefore provided as it relates to the current proposal:</p> <p><i>The underlying objective or purpose is not relevant to the development</i></p> <p>This is not applicable as the objective of the Development Standard is relevant to the development (and has been satisfied – see below in this table). It is the numerical standard itself that is not relevant to the development and is incompatible/more stringent than standards/guidelines imposed by the Apartment Design Guidelines via SEPP 65 (a higher order environmental planning instrument).</p> <p><i>That the objective would be defeated or thwarted if compliance was required</i></p> <p>While compliance with the standard would not be strictly contrary to its objective, neither would it contribute meaningfully to this objective – “ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access” (for reasoning, see below). For this reason, the numerical standard does present an unreasonable and unnecessary burden.</p> <p><i>That the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard</i></p> <p>Council's standards are inconsistent with and are more stringent than standards/guidelines imposed by the Apartment Design Guidelines via SEPP 65 (a higher order environmental planning instrument) and hence are effectively abandoned or destroyed by alternative and reasonable planning outcomes at the State level.</p> <p><i>The zoning of the land is unreasonable or inappropriate.</i></p> <p>The zoning of the land is appropriate, however, as mentioned above, the numerical development standard applicable in the zone by Clause 8.6 for building separation is not considered reasonable in this instance.</p> <p><u>Overall:</u></p> <p>The objective of the standard, which is to uphold good visual appearance, solar access, and privacy in multi- storey residential development, is relevant to the proposal and satisfied by it (see below in this table). The meeting of these objectives is not impacted by the variation of the proposal to the standard, and in this context, therefore, the numerical standard itself comprises an overly onerous</p>	Justified

Clause 8.6 Exceptions to Development Standards	Response/Justification	Outcome determined
	<p>requirement which limits the good design and considerations since the original approved design of the building (see below).</p> <p>As mentioned above, the building separation requirements are excessive and limit the ability to effectively development this inner city site, noting that the adjacent buildings are currently non compliant with the provisions of clause 8.6.</p> <p>The recommendations of the ADG require separation distances of 9m for habitable rooms (ie. 4.5m on each adjoining development site) for up to 25m and 12m (ie. 6 m per site) for over 25m. The separation provided at Levels 2-7 (at 8.66m to 14.35m) is only marginally below the required 9m. Level 10 separation is compliant with the required 12m separation (at 14.35m), although it is noted that there is no interface with the Adina building at this level. The greatest variation is at Levels 8-9 where a 12m separation is required between habitable rooms/balconies. Privacy at such levels (and at other levels) is compensated given the east and west orientation of the apartments, with louvred and screened windows and balconies.</p> <p>Further, the proposed separation distances of between 8.66m and 14.35m at Levels 2-10 ensures that adequate spatial separation between buildings is provided, as shown in the Built Form Study prepared by ADM Architects (refer extract in Figure 4-2 above).</p> <p>It is therefore justified that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.</p>	
<p><i>that there are sufficient environmental planning grounds to justify contravening the development standard.</i></p>	<p><i>In Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009, Commissioner Person determined that it is necessary for applicants to show sufficient grounds <u>particular to the development</u> in the Clause 4.6 objection.</i></p> <p>The variation to the development standard (building separation for the residential levels of the building) enable the feasible and appropriate development of the site, for the reasons given below.</p> <p>With respect to the variation to the 20m separation requirement to the northern building (at Levels 1-9); and 'non zero' setbacks to the south and west at Ground Level and Level 1 the following justification is provided:</p> <ul style="list-style-type: none"> ▪ While the numerical standard ostensibly exists to maintain a consistent visual effect, the blank wall (at 124 Corrimal Street) onto the southern boundary is not impacted by solar, privacy or shadowing issues. ▪ The proposed setback of 6.00m to the south has been utilised to provide an access for vehicles onto Corrimal Street via the development from Moore Lane which improves the options for traffic and pedestrian movements to and from the site. ▪ The design of the building adequately addresses solar access and shadowing effects on the adjacent properties. These impacts are significantly reduced from the current approval which also provided for a less separation along the western and southern boundaries (due to the bulk setting of the building). ▪ The northern apartments in question have partially enclosed balconies and narrow louvred windows, which face away from the adjacent building. Consequently, the reduced building separation causes no impacts to privacy. Similarly, the northern aspect ensures ample solar access for the unit. 	<p>Justified</p>

Clause 8.6 Exceptions to Development Standards	Response/Justification	Outcome determined
	<p>In addition, as demonstrated in the Statement of Environmental Effects, the proposed development is satisfactory having regard to environmental planning grounds, including:</p> <ul style="list-style-type: none"> State Environmental Planning Policies; Other provisions of the WLEP 2009; The relevant Chapters of WDCP 2009; Section 4.15 of the Environmental Planning and Assessment Act 1979 (refer Section 10). 	
<p><i>(4) Consent must not be granted for development that contravenes a development standard unless:</i></p> <p><i>(a) the consent authority is satisfied that:</i></p>		
<p><i>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i></p>	<p>This Variation statement provides a discussion in support of the justification for varying the development standards as indicated in (3) above. In our opinion, there is sufficient justification provided to support a variation to the building separation requirements.</p>	Satisfied
<p><i>(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</i></p> <p><u>Wollongong LEP 2009:</u></p> <p><u>Objectives of the Standard (Clause 8.6)</u></p> <p><i>"to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access".</i></p> <p><u>Objectives of the Zones</u></p> <ul style="list-style-type: none"> To provide a mixture of compatible land uses. To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport 	<p>Despite the variation to the required separation distances, the proposed development will be in the public interest as it still meets the objectives of the clause 8.6 as:</p> <ul style="list-style-type: none"> Privacy is not impacted by the proposed variation to the standard on the southern boundary. The private laneway addition and open air configuration provides a positive outcome to the local area and does not impact negatively on southern property. The provision of an "L" shape tower has improved potential shadowing impacts and solar access to adjoining properties. Similarly, for the northern boundary solar access and shadowing have been adequately addressed, with northern facing apartments being aligned to face east and west to address privacy impacts. <p>Hence the proposed development achieves the objective of the building separation development standard.</p> <p>The proposed development is also consistent with the objectives of the B3 Commercial Core zone as it will:</p> <ul style="list-style-type: none"> Provide a ground floor commercial space and much needed affordable and high-density residential development; Do so in central Wollongong itself, with close access to the full range of retail and commercial spaces within the CBD, as well as access to reliable public transport options and the walking and cycling links associated with the Wollongong City Centre; Provide a greatly complimentary set of uses which would act to support the commercial centre, with no conceivable adverse impacts. <p>Overall, the development of the site as proposed will facilitate the ongoing viability and economic development of the Wollongong City Centre and hence is in the public interest.</p>	Justified

Clause 8.6 Exceptions to Development Standards	Response/Justification	Outcome determined
<p><i>patronage and encourage walking and cycling.</i></p> <ul style="list-style-type: none"> <i>To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.</i> 	<p>Furthermore, it is considered that the proposed development meets the majority of the Aims of WLEP 2009 [Clause 1.2(2)] as follows:</p> <p><i>(b) encourage economic and business development to increase employment opportunities,</i></p> <p><i>(c) encourage a range of housing choices consistent with the capacity of the land,</i></p> <p><i>(d) to improve the quality of life and the social well-being and amenity of residents, business operators, workers and visitors,</i></p> <p><i>(f) conserve and enhance heritage,</i></p> <p><i>(g) ensure that development is consistent with the constraints of the land and can be appropriately serviced by infrastructure.</i></p>	
<p><i>the concurrence of the Director-General has been obtained.</i></p>	<p>Council will need to consult with the Department of Planning and Infrastructure as to whether the concurrence of the DG can be assumed in accordance with Planning Circular PS 08-003-Variations to Development Standards (Department of Planning, May 2008).</p>	Addressed
<p><i>(5) In deciding whether to grant concurrence, the Director-General must consider:</i></p>		
<p><i>whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</i></p>	<p>The contravention of this development standard does not raise any matter of significance for state or regional environmental planning. Refer to further discussion below in this table.</p>	Addressed
<p><i>the public benefit of maintaining the development standard, and</i></p>	<p>The development is located in on a site, and is of a design, whereby compliance with the numerical standards of Clause 8.6 do not align with its objectives.</p> <p>There will be no measurable public benefit by adhering to the separation distance requirements of Clause 8.6, this takes into consideration the existing developments and design elements that have been amended from the current existing approval.</p>	Satisfied
<p><i>(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.</i></p>	<p>It is considered that there are no environmental planning considerations that would hinder the Director-General from providing concurrence.</p>	Addressed

6 Conclusion

This Statement has addressed the provisions of Clause 4.6 of Wollongong LEP 2009 and demonstrates that the variation sought to the development standard of the LEP (Building Separation) is justifiable on the following basis:

- The separation from the southern boundary and western boundaries at Ground Level and Level 1 will not impact on privacy to the adjacent building occupants. Conversely, the introduction of a dedicated laneway will provide significant community and traffic benefits.
- The reduced separation from the northern boundary at Levels 2-9 (with no interface at Level 10) will not unreasonably impact privacy, due to the inclusion of privacy screens on the northern façade and

the orientation of apartments to the east and west. Further, compliance with the separation requirements of the ADG is achieved or only marginally below the required setback in many positions on the northern elevation.

- The accompanying plans prepared by ADM Architects demonstrate that the proposed development, will not have significant nor unacceptable overshadowing impacts in this inner city location, irrespective of the reduced setbacks.
- The utilisation of Lot 1 DP 152199 incorporates this lot into the overall project, thus removing the potential for the creation of an isolated lot.

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