

Clause 4.6 Exceptions to Development Standards Report Building Height – Mixed Use Development at 116-122 Crown Street, Wollongong

Revision 2 - 25 September 2023

1 Introduction

This report comprises a revised 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 4.3 – Height of Buildings**” of Wollongong Local Environmental Plan 2009 (WLEP). The 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 C, dated 16 August 23. In brief, the revised plans have increased the floor to ceiling height of the Ground Level retail tenancies, as requested by Council. This has resulted in an increase in the overall height of the building. A detailed description of the proposed development can be found within the Statement of Environmental Effects, also prepared by Stantec.

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 4.3 of WLEP as relevant to the proposal.

Section 4 – Detailed discussion of compliance of the proposal with Clause 4.3.

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

Section 6 - Conclusions

2 Clause 4.6 of WLEP 2009

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

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

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

The objectives of Clause 4.6 are as follows:

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

This statement is provided in order to justify a variation to Clause 4.3 'Height of Buildings' under the following provisions of WLEP 2009, in accordance with Clause 4.6 of that Plan, as the application of these requirements is considered unreasonable or unnecessary for this particular development.

3 Clause 4.3 Height of Buildings

The objectives of this clause are:

- (a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,
- (b) to permit building heights that encourage high quality urban form,
- (c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.

Sub-clause (2) provides that the height of a building on land is not to exceed the maximum height shown on the Height of Buildings Map (to Wollongong LEP 2009), shown as follows:

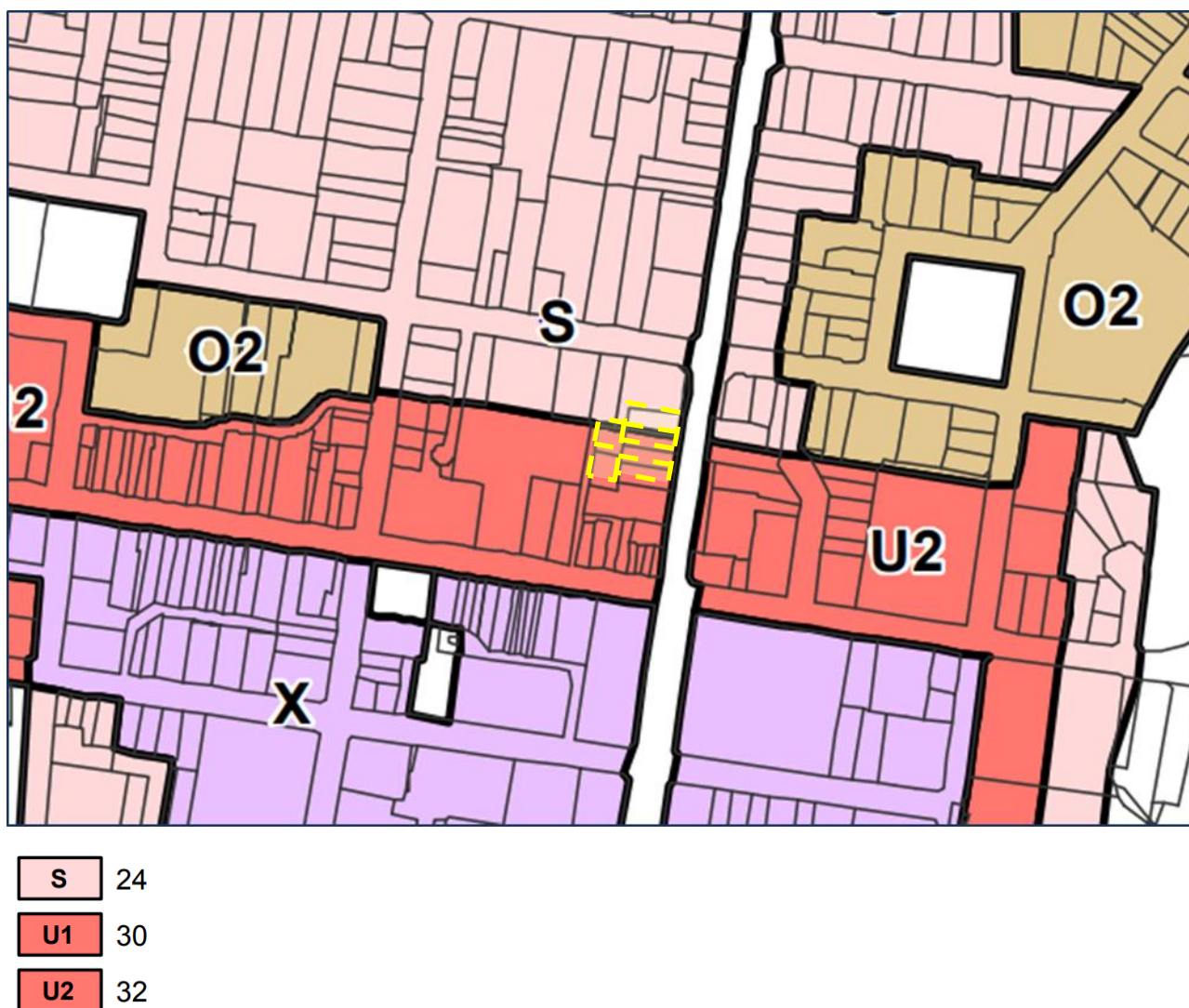


Figure 1: Extract of WLEP 2009 Height of Building Map showing the maximum building heights applicable to the subject site B3 Commercial Core zone (Source: Wollongong City Council online mapping, Dec 2021).

This clause applies as the proposed development exceeds the prescribed maximum height limits of 32m for four (4) of the lots, and 24m for the lot on the northern side of the site.

'Building height (or height of building)' is defined within WLEP 2009 as "the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like".

4 Discussion of Compliance with Clause 4.3 of WLEP 2009

The revised plans submitted in relation to the development application seek approval for the construction of a mixed-use building, comprising three (3) levels of basement parking and ten (10) levels of residential apartments above a ground floor retail level. A variation to the maximum building height standard is proposed as follows for the two parts of the site having different maximum height controls:

Southern part of site: The proposed maximum height of the development is 37.35m [measured from natural ground level (RL8.95) to top of roof plant room (RL46.30)]. This portion of the building is located within the southern part of the site with a maximum 32m building height development standard. This exceedance is variable as shown in the Figure 2 below (in yellow), being a maximum of 5.35m (reduced from the 7.5m, which was proposed in the plans which were originally submitted with the development application, DA Issued A).

Northern part of site (Lot 1 DP152199): The proposed maximum building height of 24m applies to this part of the site. The proposed maximum overall height is 35.40m [measured from natural ground level (RL9.5) to top of roof RL44.90)]. This exceedance is variable as shown in the Figure 2 below (in blue), being a maximum of 11.40m (reduced from the 12.8m, which was proposed in the plans which were originally submitted with the development application).



Figure 2: Excerpt from Eastern Elevation Plan (A-201 Issue C by ADM Architects) illustrating extent of variation to permitted maximum building height controls of 32m (in yellow) and 24m (in blue). The blue dotted line depicts the building envelope of the previously submitted plans for this Development Application (Issue A). The pink dotted line depicts the building envelope of the previously approved valid development application.

5 Clause 4.6 - Exceptions to Development Standards Report

Clause 4.3 of WLEP 2009 contains planning objectives which underpin the building height development standards. A written justification for the proposed variation 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 standard in Clause 4.3 of the WLEP.

As indicated in Section 4 above, this Statement seeks variation to the following height exceedances:

- The required 32m height limitation prescribed for the portion of the proposed building which occupies the southern portion of the site (exceeds by up to 5.35m). This provides for a reduced height from the height of the approved residential flat building on this part of the site, being DA 2004/564/A. This approved development is still an active consent. The approved building envelope is shown on accompanying drawings East Elevation (A-201) at Figure 2 by the pink dotted outline.
- The required 24m height limitation prescribed for the northern portion of the site (exceeds by up to 11.40m). The height encroachment is required to maintain consistency and coherence with that part of the building which occupies the 32m height allowance and facilitates an optimum built outcome for the site.

A copy of the Height Plane Diagram prepared by ADM Architects which shows the height exceedance is contained in Figure 3 below.



HEIGHT PLANE DIAGRAM

Figure 3: Height Plane Diagram prepared by ADM Architects (A-601) showing extent of height exceedance.

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 4.3 Height of Buildings

Clause 4.3 Exceptions to Development Standards	Response/Justification	Consistent/ Complies
<p>(1) Objectives</p> <p>a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and</p> <p>b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p>	<p>Flexibility is sought for the application of the building height variations so that a better outcome is achieved for the site, vehicular movements and overall streetscape. The particular circumstances for this are as follows:</p> <ul style="list-style-type: none"> ▪ The subject site is within a transitional precinct located on the fringe of the city centre where the prevailing height controls change from 32m (southern portion) to 24m (northern portion), which translates to significant variation of 12m within the site itself. Adherence to this varied height requirement across the subject site would necessitate a 'stepped' building arrangement, whereby a narrow section of the northernmost part of the building would be approximately 2-3 storeys below that of the main southern component of the building. This would result in an unbalanced eastern elevation when viewed from the Corrimal Street frontage and would create an undesirable built form outcome. Flexibility in the application of the 24m height control is sought given the split height control which applies to the site and having regard to the improved design outcome which will be achieved by applying a consistent height control to the overall development. ▪ Wollongong Council (in its correspondence of 22.2.23) has advised that historically it was its intention to facilitate taller buildings at corner locations and that draft planning documents prior to 2007 endeavoured to facilitate this. However, this correspondence also acknowledges that the gazettal of the state government initiated City Centre LEP in 2007 resulted in the current 32/24m split across the site and that this split height is replicated in WLEP 2009, which currently applies to the city centre. It is therefore evident that the current LEP does not provide the legislative framework to facilitate 'marking' of the corner location at No. 114 Corrimal Street (Adina Apartments). Conversely, the proposed building provides for a continuity in height across the Corrimal Street frontage, with 'marking' of the Corrimal/Market Street corner appropriately achieved through the inclusion of the distinct curved roof feature on the roof of the Adina Building (refer Figures 4 and 5). ▪ It is further noted that the existing 10 storey building to the north (Adina Apartments) already significantly exceeds the 24m maximum building height (by approx. 10 metres) and the 32m height limit of the adjoining mapped area. The proposed building at No. 116-122 provides a comparable height to the adjacent Adina building and to other buildings within this precinct and provides an appropriate streetscape outcome as demonstrated in Figures 4 and 5. This photomontage shows that, despite the exceedance of the 32m height restriction, the stepping back of the upper level (Level 10) of the proposed building ensures that the appearance from Corrimal Street is not of a building which dominates the streetscape, but rather of one which is complimentary to the adjacent Adina building in terms of having a lower appearance and a less dominant roof form. 	Justified

Clause 4.3 Exceptions to Development Standards	Response/Justification	Consistent/ Complies
	<div data-bbox="518 392 1212 907" data-label="Image">  </div> <p data-bbox="491 913 1236 1012">Figure 4: Photomontage (prepared by ADM Architects) looking south from the corner of Market and Corrimal Streets towards subject site, showing dominance of Adina Apartment building roof feature which marks this corner location.</p> <div data-bbox="529 1059 1228 1579" data-label="Image">  </div> <p data-bbox="491 1599 1230 1675">Figure 5: Photomontage (prepared by ADM Architects) looking north towards subject site along Corrimal Street, demonstrating that the upper level of the building is not visible from this position at the street level.</p> <ul data-bbox="491 1720 1236 2072" style="list-style-type: none"> ▪ The provision of the private laneway at the southern boundary of the site forfeits significant allowable floor area at the lower levels of the building which provides improvements to vehicular movements within the block, in addition to urban design and activation outcomes. Flexibility is therefore sought in relation to the application of the height controls to allow for 'transference' of this floor space to the upper levels of the building. ▪ In summary, compliance with the 24m and 32m for the subject site would not achieve an optimum outcome for this site and block context. This has been demonstrated by the detailed Site and Context Analysis documentation accompanying the application (ADM Architects Dwgs A-002 to A-006). 	

Clause 4.3 Exceptions to Development Standards	Response/Justification	Consistent/ Complies
<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>	This subclause is not relevant to the subject proposal.	N/A
<i>(3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:</i>	This table comprises the written request seeking to justify the contravention of the building separation development standard.	Provided
<i>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</i>	<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.</i></p> <p><i>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><i>A response to each of these approaches is therefore provided as it relates to the current proposal:</i></p> <p><i>The underlying objective or purpose is not relevant to the development</i></p> <p><i>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 more stringent than previous development approval granted to the site, and to the circumstances of the case, which includes consolidation of a 6 individual land parcels, resulting in a more desirable development outcome.</i></p> <p><i>That the objective would be defeated or thwarted if compliance was required</i></p> <p><i>Applicable: Objective (a) of Clause 4.3 of WLEP 2009 seeks to “to establish the maximum height limit in which buildings can be designed and floor space can be achieved”. It is considered that if the maximum building heights of 32 and 24m were complied with, that the achievement of the allowable floor space ratio for the site</i></p>	Justified

Clause 4.3 Exceptions to Development Standards	Response/Justification	Consistent/ Complies
	<p>would be thwarted. While the reduced floor area by height compliance has not been quantified, it represents 3.5 storeys on the northern side of the site (24m limit) and 1 to 1.5 storeys across the remainder of the site.</p> <p>Furthermore, objective (b) “<i>to permit building heights that encourage high quality urban form</i>” would also be thwarted. As demonstrated by the detailed Site and Context Analysis documentation accompanying the application (ADM Architects Dwgs A-002 to A-006), the proposed building height with stepped upper level provides a cohesive built outcome within the site and as it relates to the existing buildings within the block. The higher form to the east of the site allows for optimum solar access and privacy to the site and adjacent properties.</p> <p>Both of the above objectives are also achieved by the provision of the private laneway at the southern boundary of the site, which forfeits significant allowable floor area at the lower levels of the building. This floor area is sought to be transferred to the upper levels which both achieve the intended floor area/density for the site and result in a higher quality urban form through improvements to pedestrian and vehicular movements within the block, and increased activation and building separation.</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>Applies. Similar building heights already exist on adjacent land that exceed the controls. The existing 10 storey building to the north (Adina Apartments) already significantly exceeds the 24m maximum building height (by approx. 10 metres) and the 32m height limit of the adjoining mapped area. The existing apartments fronting Market Street also exceed current height controls. Furthermore, the approved valid development application applicable to the land (2004) also confirms a higher building can be appropriately accommodated on the land.</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 4.3 for building height is not.</p> <p>Having regard to existing departures of the standard on the site and adjacent land, and that the Objectives (a) and (b) of the standard would be thwarted, 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>Compliance with the required building height (particularly the maximum 24m height portion to the north of the site) would result in a building which is not visually appealing. This is because the adjacent Adina Apartments building already exceeds the building height, as do the residential buildings fronting Market Street. The higher built form (a) provides a cohesive built form outcome as it relates to the existing buildings within the block and also the Corrimal Street streetscape. The higher “L shape” massing to the east and south of the site allows for optimum solar access and privacy to the proposed building and adjacent properties. This massing also achieves the allowable density for the site, without adverse environmental planning impacts.</p>	<p>Justified</p>

Clause 4.3 Exceptions to Development Standards	Response/Justification	Consistent/ Complies
	<p>Despite the exceedance of the height limit, the building will also not contribute to additional significant impacts on solar access to adjacent buildings and outdoor dining spaces, as shown in the Shadow Analysis 1 prepared by ADM Architects (Drawing A-401 and A-402). Such drawings demonstrate the shadow cast from existing buildings; a compliant building height; and a non compliant height, as proposed. This analysis confirms the following:</p> <ul style="list-style-type: none"> > Through the morning period, until midday, the additional shadow cast is limited to minor areas principally in the position of existing buildings to the south of the site. At 9am the rear the heritage item at 68-70 Crown Street (Lisborne House) is shadowed however the frontage of this item is not affected and the shadow is moving on by 10am. > At 9am the heritage item at 72-76 Crown Street (west of Moore Lane) is in shadow however this shadow is primarily due to the impact of the recently approved development on this site, with this shadow also moving on by 10am. > In the afternoon period the impact on heritage items as a result of the additional height is limited to a very minor impact on the Comelli Building (48-50 Crown Street), with no impact on Alice Villa (117 Corrimal Street). With respect to such impact it is also noted that, as demonstrated in the Shadow Analysis, the affected part of the building appears to be already impacted by shadows cast by existing buildings. > In the morning period only an exceptionally minor area of the Crown Street road reserve is affected by shadow (at 9am), with this area not impacting outdoor dining areas. > In the afternoon period a limited area of the Corrimal Street road reserve is affected at approx. 1pm and 2pm in mid winter, however the impact on outdoor dining areas is limited to the perimeter of spaces on the eastern side of Corrimal Street in mid winter, with such areas already appearing to be impacted by existing shadow. <p>Furthermore, the provision of the private laneway at the southern boundary of the site forfeits significant allowable floor area at the lower levels of the building, which is intended to be transferred to the upper levels.</p> <p>Accordingly, it is submitted that there are numerous environmental planning grounds including improvements to vehicular and pedestrian movements within the block, minimal change to shadowing, improved urban design and activation within the City Centre.</p> <p>As detailed elsewhere in this table, for the reasons above, the objectives of the building height control and B3 zone are achieved despite the non-compliance with the applicable height controls, thereby satisfying these environmental planning grounds. The variation to the development standard (building height) also enables the feasible and appropriate development of the site.</p> <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; 	

Clause 4.3 Exceptions to Development Standards	Response/Justification	Consistent/ Complies
	<ul style="list-style-type: none"> Section 4.15 of the Environmental Planning and Assessment Act 1979. 	
<p>(4) Consent must not be granted for development that contravenes a development standard unless:</p> <p>(a) the consent authority is satisfied that:</p>		
<p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p>	<p>This Variation statement provides a discussion in support of the justification for varying the development standards as indicated in (3) above. In our opinion, there is sufficient justification provided to support a variation to the building separation requirements.</p>	Satisfied
<p>(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</p> <p><u>Wollongong LEP 2009:</u></p> <p><u>Objectives of the Standard (Clause 4.3)</u></p> <p>"to establish the maximum height limit in which buildings can be designed and floor space can be achieved";</p> <p>"to permit building heights that encourage high quality urban form"; and</p> <p>"to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight".</p> <p><u>Objectives of the Zones</u></p> <ul style="list-style-type: none"> 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. 	<p>Despite the variation to the 24m and 32m maximum building height standards, the proposed development will be in the public interest as it still meets the objectives of clause 4.3 as:</p> <ul style="list-style-type: none"> The allowable floor space can be achieved. This is due to the appropriate massing across the consolidated site and having regard to various design challenges including public domain (laneways and access points) and privacy outcomes for adjacent buildings. High quality form is achieved: the proposed building height/stepped upper level provides a cohesive built outcome within the site and as it relates to the existing buildings within the block. The Built Form Analysis provided with the application (ADM Architects) demonstrates this can be achieved, including considering future potential building envelopes of the Harp Hotel and other underdeveloped adjacent sites. Solar access outcomes are achieved (supported by Shadow Analysis plans and SEPP 65 compliance table prepared by ADM Architects). Therefore, the proposed height encroachments do not contribute to unreasonable shadowing impacts. <p>Overall the development is a high quality building that provides a positive response to the context and therefore is in the public interest.</p> <p>Hence the proposed development achieves the objective of the building height development standard.</p> <p>The proposed development is also consistent with the objectives of the B3 Commercial Core zone (of WLEP 2009) as it will:</p> <ul style="list-style-type: none"> Provide a mixed use building of a high density typology with ground floor commercial floorspace suitable to the City Centre location. The commercial space will provide employment opportunities in a highly accessible location, being located close to reliable public transport options and the walking and cycling links associated with the coastal zone. The active street frontages and proposed private lane, together with a variety of retail, service, tourism and entertainment uses nearby will promote vibrancy for the locality. <p>The provision of the private laneway at the southern boundary of the site forfeits significant allowable floor area at the lower levels of the building, which is intended to be transferred to the upper levels.</p>	Justified

Clause 4.3 Exceptions to Development Standards	Response/Justification	Consistent/ Complies
<ul style="list-style-type: none"> <i>To maximise public transport patronage and encourage walking and cycling.</i> <i>To strengthen the role of the Wollongong city centre as the regional business, retail and cultural centre of the Illawarra region.</i> <i>To provide for high density residential development within a mixed use development if it—</i> <ul style="list-style-type: none"> <i>(a) is in a location that is accessible to public transport, employment, retail, commercial and service facilities, and</i> <i>(b) contributes to the vitality of the Wollongong city centre.</i> 	<p>The abovementioned achievement of the objectives of Clause 4.3 and the B3 Zone are also supported by the clear public benefits provided by the laneway, which is therefore in the public interest: eg. improvements to vehicular and pedestrian movements within the block, increased building separation, improved urban design and activation and vitality within the City Centre.</p> <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> <p>Furthermore, it is considered that the proposed development is in the public interest as it meets the majority of the Aims of WLEP 2009 [Clause 1.2(2)], principally the following:</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>(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>	<p>Addressed</p>
<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>	<p>Addressed</p>
<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 4.3 (Building Height) do not align with its objectives.</p> <p>There will be no measurable public benefit by adhering to the building height requirements of Clause 4.3, particularly as floor area, solar access, privacy and good urban form outcomes are achieved for this eastern city block context, where similar building heights already exist that exceed the controls. The approved valid development application applicable to the land (2004) also confirms a higher building can be appropriately accommodated on the land.</p> <p>It is argued that there is public benefit by <i>not</i> maintaining the development standard in this instance. This is because the provision of the private laneway at the southern boundary of the site (which forfeits floor area at the lower levels of the site) has significant benefits and, on balance, is a better outcome for the broader community as the proposed transferral of this floor space to the upper levels of the building will have no likely adverse impacts.</p>	<p>Satisfied</p>

Clause 4.3 Exceptions to Development Standards	Response/Justification	Consistent/ Complies
<i>(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.</i>	It is considered that there are no environmental planning considerations that would hinder the Director-General from providing concurrence.	Addressed

6 Conclusion

This Statement has addressed the provisions of Clause 4.6 of Wollongong LEP 2009 and demonstrates that the variation sought to the development standard of the LEP (Clause 4.3 Building Height) is justifiable on the following basis:

- The subject site is within a transitional precinct located on the fringe of the city centre where the prevailing height controls change from 32m (southern portion) to 24m (northern portion), which translates to significant variation of 12m within the site itself.
- The existing building to the north (Adina Apartments) already significantly exceeds the 24m maximum building height (by approx. 10 metres) and the 32m height limit of the adjoining mapped area. The proposed building at No. 116-122 provides a comparable height to the adjacent Adina building and to other buildings within this precinct and provides an appropriate streetscape outcome. Despite the exceedance of the 32m height restriction, the stepping back of the upper level (Level 10) of the proposed building ensures that the appearance from Corimal Street is not of a building which dominates the streetscape, but rather of one which is complimentary to the adjacent Adina building in terms of having a lower appearance and a less dominant roof form.
- Compliance with the 24m and 32m height for the subject site would not achieve an optimum outcome for this site and block context. This has been demonstrated by the detailed Site and Context Analysis documentation accompanying the application (ADM Architects Dwgs A-002 to A-006) which also considers future potential building envelopes of the Harp Hotel and other underdeveloped adjacent sites.
- The higher “L shape” higher massing to the east and south of the site allows for optimum solar access and privacy to the proposed building and adjacent properties. This massing also achieves the allowable density for the site, without adverse environmental planning impacts including solar access.
- Having regard to existing departures of the standard on the adjacent sites and the subject site itself (via the 2004 approval that is still active), objectives (a) and (b) of the building height development standard would be thwarted. Compliance with the development standard is therefore considered to be unreasonable or unnecessary in the circumstances of the case. This variation statement also justifies that the proposed development will be in the public interest as it meets these objectives and other relevant environmental planning grounds.
- It is argued that there is public benefit by *not* maintaining the development standard in this instance. This is because the provision of the private laneway at the southern boundary of the site (which forfeits floor area at the lower levels of the site) has significant benefits. On balance, this is considered a better outcome for the broader community, as the transferral of this floor space to the upper levels of the building will have no likely adverse impacts.

Overall, the development is a high quality building that provides a positive response to the context and flexibility is therefore sought for the application of the building height variations so that a better outcome is achieved for the site despite the variation to the 24m and 32m maximum building height standard. On this basis, strict compliance with the building separation controls of WLEP 2009 is considered unnecessary and Council's support for the variation is sought.

STANTEC AUSTRALIA PTY LTD



Elaine Treglown

Group Leader - Planning & Environment

Phone: +61 2 42319637

elaine.treglown@stantec.com