



LEP Exception to Development Standard

Appendix A – Statement of Environmental Effects

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 the demolition of existing structures and the construction of a new multi-storey mixed use development at Lot 1 & 2 DP 543836; Lot A DP 15464; and Lot 2 & 3 DP 555229, 22-30 Kenny Street, Wollongong (herein referred to as subject site). 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 DWA architectural plans provided with the DA. The proposal breaches the building separation development standards to existing buildings to the north 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 request relate to the fact that the neighbouring buildings to the west don't meet current building separation requirements for future precinct planning, whilst physical separation at ground level/podium level is required to the north due to an existing stormwater easement and overland flow flood path bisecting the site. 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. Additionally, it would likely also increase environmental impacts associated with off-site flooding impacts to adjoining properties.

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

Subject land

The subject site is located at the southern end of the Wollongong City Centre area, on the western side of Kenny Street midway between the intersections of Burelli Street (north) and Ellen Street (south). The area to be redeveloped includes Lot 1 & 2 DP 543836; Lot A DP 15464; and Lot 2 & 3 DP 555229. The address is known as 22-30 Kenny Street, Wollongong.

The combined site is a regular shaped allotment of 3,833.5m² in area and currently contains various commercial buildings throughout. All structures and surfaces are proposed to be demolished to support the new development. The subject lots will be consolidated as a result of the development also.

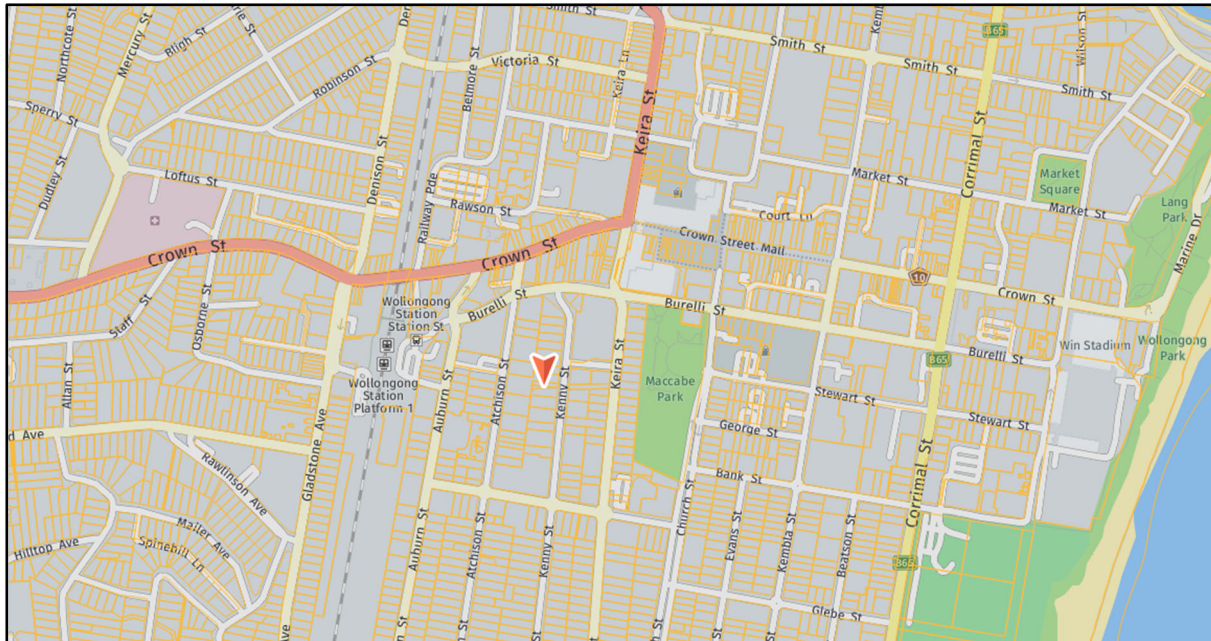


FIGURE 1 LOCATION PLAN (ARCHISTAR)

The subject site has a notable frontage to Kenny Street in the order of 75 metres, and vehicle access to this road is provided in the form of multiple driveway entries. The land is relatively flat throughout, with minor variable levels throughout. There is an existing easement that bisects the northern portion of the site for the purposes of drainage, which can be seen in the survey plan prepared by CEH (attached to the application).



FIGURE 2 SURVEY PLAN (CEH)



FIGURE 3 AERIAL OF SUBJECT SITE (ARCHISTAR)

There are a number of small trees within the site at the northern end (to be removed), together with an existing tree within the public domain to be to be retained. An Arboricultural Impact Assessment Report prepared by Allied Tree Consulting has been included with the application in consideration of removal and retention measures for these trees.

The site is located within an existing commercially orientated area that contains a mix of uses, including business, office, retail and light industrial uses, and newly developed high density residential/shop top housing developments.

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

North	E2 Commercial Centre	Commercial car park, with single and double storey commercial premises
South	E2 Commercial Centre	Single and double storey commercial premises
East	E2 Commercial Centre	Single and double storey commercial premises, with a new multi-storey mixed use residential and commercial premises under construction (east) and recently completed (to the south-east)
West	E2 Commercial Centre	Multi-storey mixed use residential and commercial premises fronting Atchison Street



FIGURE 4 SURROUNDING ZONING (ARCHISTAR)

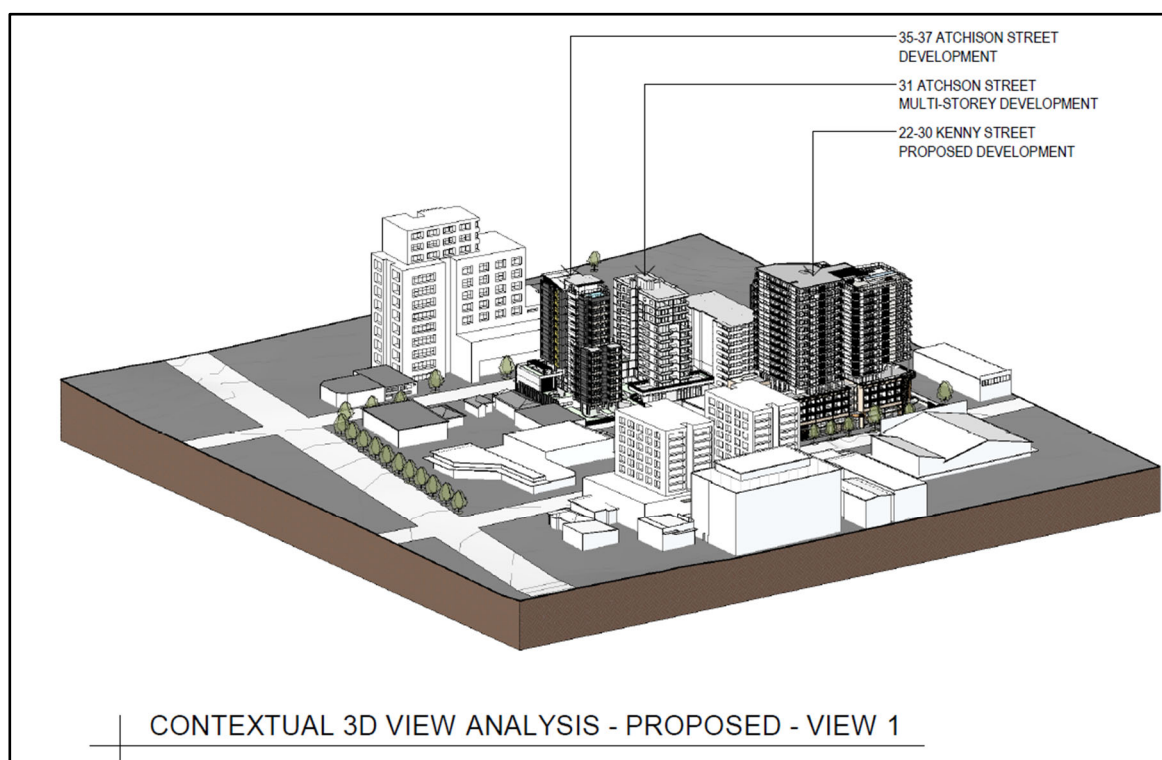


FIGURE 5 CONTEXTUAL 3D VIEW ANALYSIS FROM SOUTH-EAST (DWA)

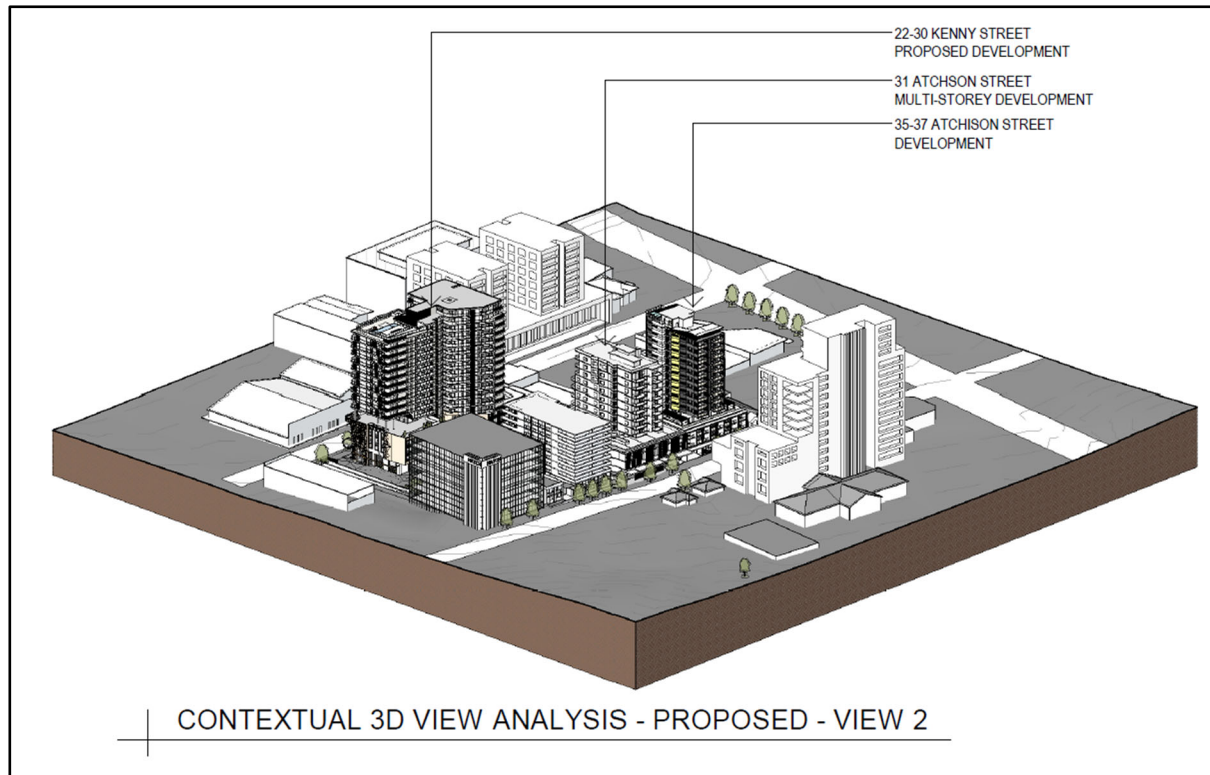


FIGURE 6 CONTEXTUAL 3D VIEW ANALYSIS FROM NORTH-WEST (DWA)

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.”

As above, the subject site is situated at the south western end of the Wollongong City Centre, approximately 280m east of the Wollongong Tran Station. As such, the property is well located in close proximity to a wide range of shops, services, employment and facilities, including recreation and community infrastructure (i.e. parks, schools, hospitals, TAFE and university etc).

The land is strategically located in an accessible location, with public transport (i.e. both bus and train services) located at the doorstep to the site. The site is situated within the Wollongong City Council Local Government Area (LGA), approximately 80km south of Sydney.

Proposed development

Key development details include:

- Demolition of all existing buildings/structures and tree removal.
- Construction of a new 18 storey mixed use building consisting of a hotel with ground floor food and drink premises and commercial premises; 107 hotel rooms/suites; and 105 residential apartments
- Ground and basement level parking for 190 cars, with additional 47 bicycle and 10 motorcycle parking spaces
- Associated communal open space areas for both the hotel and residential, together associated landscaping, service infrastructure and stormwater drainage works.

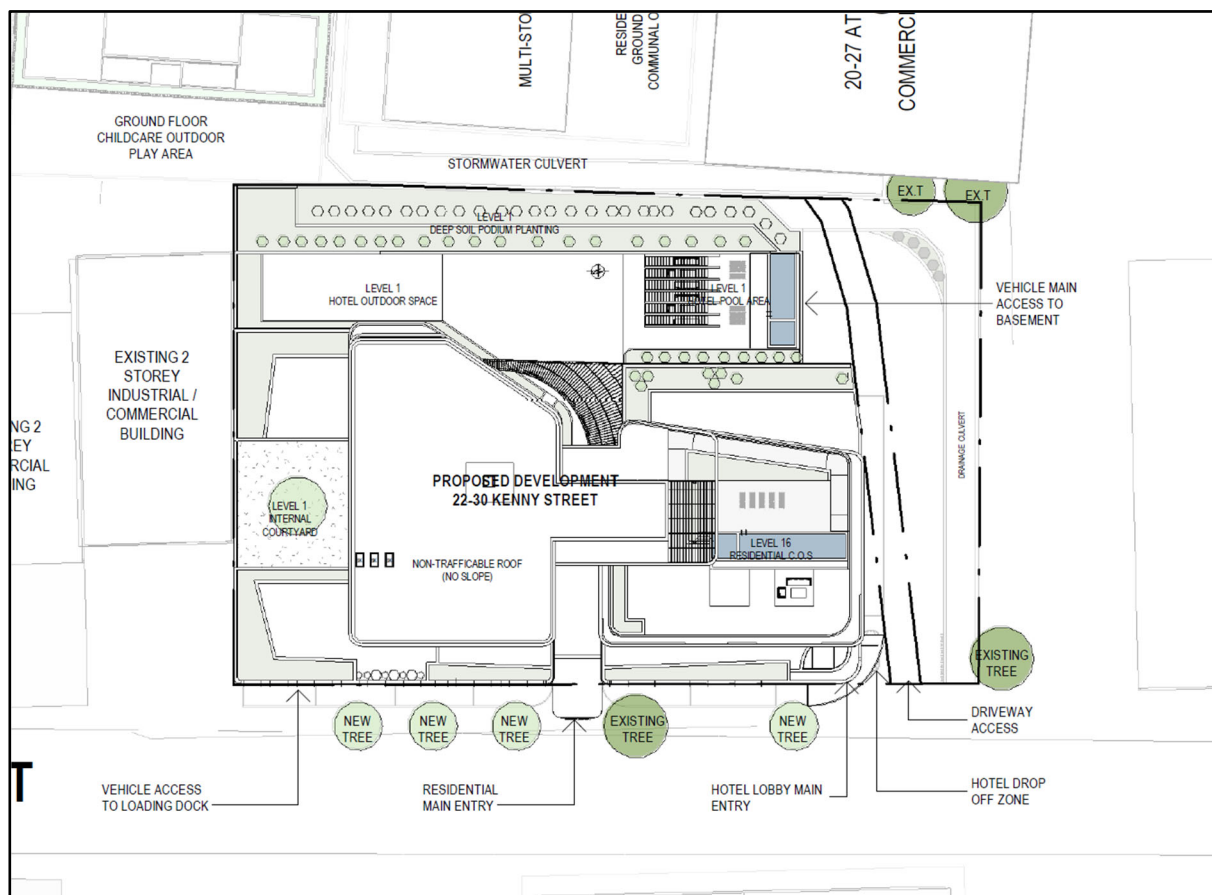


FIGURE 7 SITE PLAN EXTRACT (DWA)



FIGURE 8 KENNY ST 3D PERSPECTIVES (DWA)



FIGURE 9 WESTERN 3D PERSPECTIVES (DWA)

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 *Hotel or motel accommodation, Food and drink Premises* and *Shop top housing* are all 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/separation to existing neighbouring buildings as follows:

Boundary / Neighbouring Building	Corresponding Proposed Development Level(s)	Development Standard (interface)	Building Separation Proposed	Compliance	% Variation
* Note: Measurements available have been provided by DWA, or 'scaled off' as approximates from the DWA Architectural Plans					
WEST					
25 Atchison St	* No existing building above 6 storeys				
25 Atchison St (commercial level ground)	Ground Level (commercial parking)	0 metres – no separation (commercial to commercial)	Approximately 3.5m	No	Variation 1 % N/A
25 Atchison St (commercial levels 1 to 3)	Levels 1 to 3 (hotel)	12 metres (commercial to commercial)	Approximately 18m	Yes	
25 Atchison St (commercial level)	Level 4 (residential COS) * non-habitable	12 metres (commercial to commercial)	37.7m	Yes	
25 Atchison St (commercial level 5)	Level 5 (residential)	16 metres (commercial to residential)	27.4m	Yes	
27 Atchison St	* No existing building above 9 storeys				
27 Atchison St (residential ground level)	Ground (commercial parking)	16 metres (commercial to residential)	5.883m	No	Variation 2 63.25%
27 Atchison St (residential levels 1 to 3)	Levels 1 to 3 (hotel)	16 metres (commercial to residential)	21.6m	Yes	
27 Atchison St (residential levels 4 to 8)	Level 4 to 8 (residential)	20 metres (residential to residential)	20.6m	Yes	
31 Atchison St	* No existing building above 12 storeys				
31 Atchison St (childcare ground level)	Ground Level (commercial parking)	0 metres (commercial to commercial)	0m	Yes	
31 Atchison St (residential levels 1 to 3)	Level 1 to 3 (hotel)	16 metres (commercial to residential)	24.8m	Yes	
31 Atchison St (residential levels 3 to 11)	Level 4 to 11 (residential)	20 metres (residential to residential)	Approximately 26.5m	Yes	
NORTH					
25 Atchison St	* No existing building – at-grade carpark off Kenny Street only				
24 Atchison St (car park ground level)	Ground Level (commercial/hotel)	0 metres – no separation	12m	No	Variation 3 % N/A

		(commercial to commercial)			
SOUTH					
32 Kenny St	* No existing building above 2 storeys				
32 Kenny St (commercial ground and level 1)	Ground Level (commercial car parking/hotel)	0 metres – no separation (commercial to commercial)	0m	Yes	
EAST					
Kenny Street frontage	* N/A – road reserve approx. 20m				

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

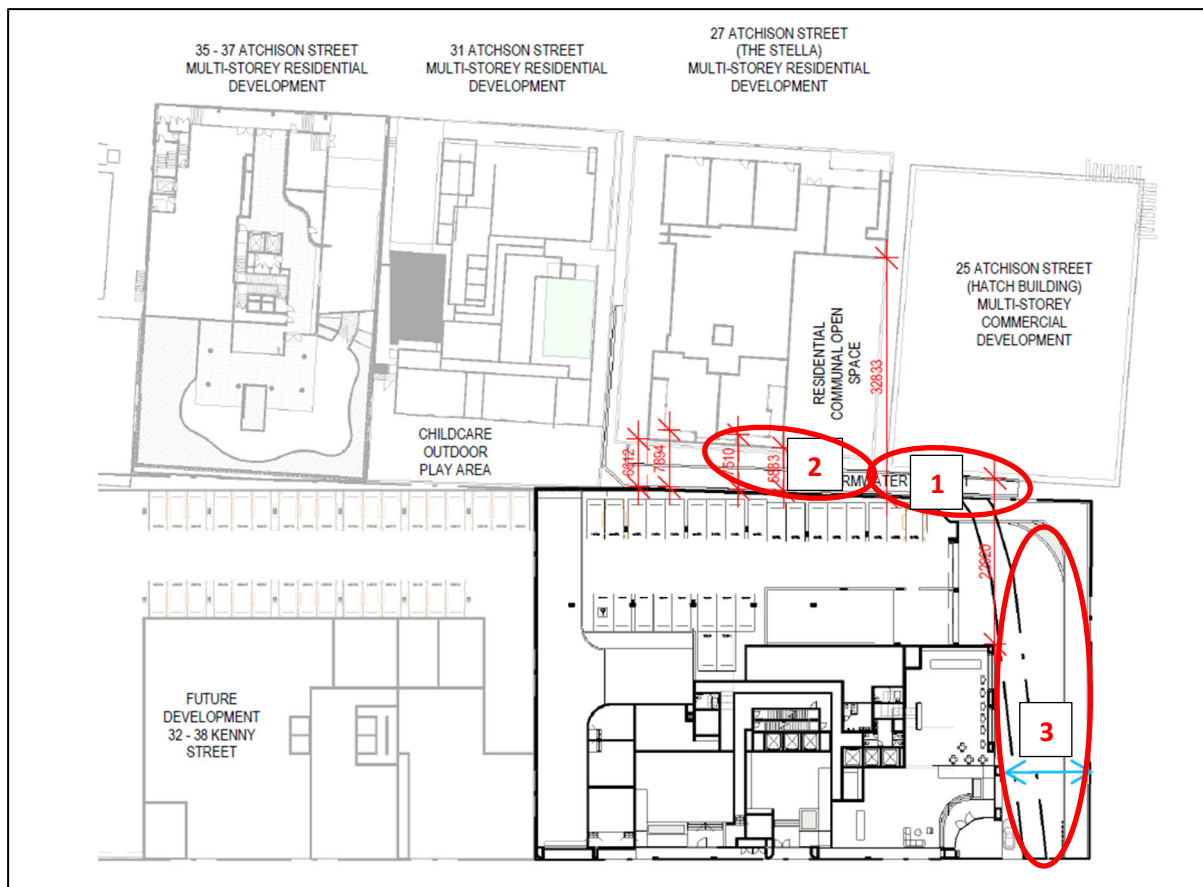


FIGURE 10 GROUND LEVEL CONTEXT ANALYSIS (DWA)

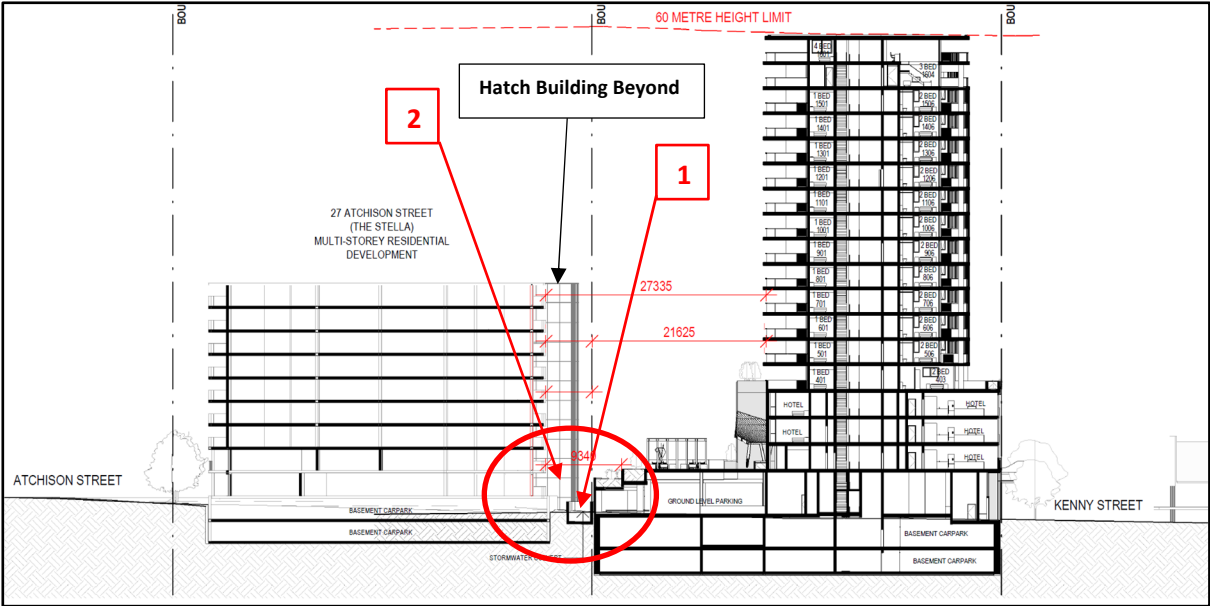


FIGURE 11 EAST-WEST PROFILE SECTION (DWA)

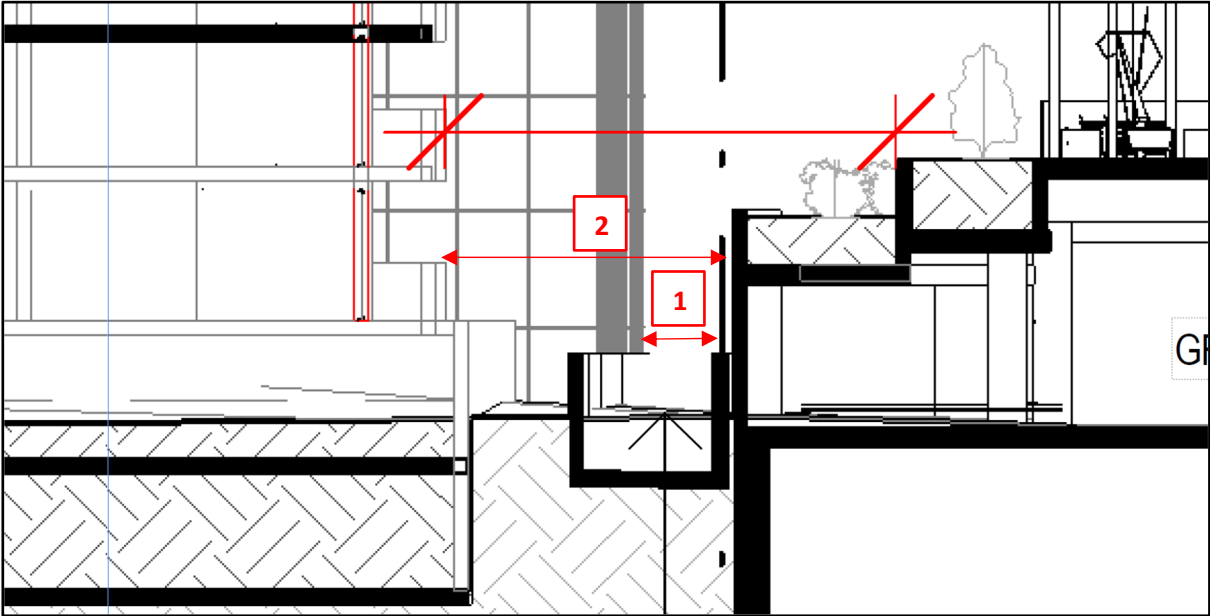


FIGURE 12 INSET EAST-WEST PROFILE SECTION (DWA)

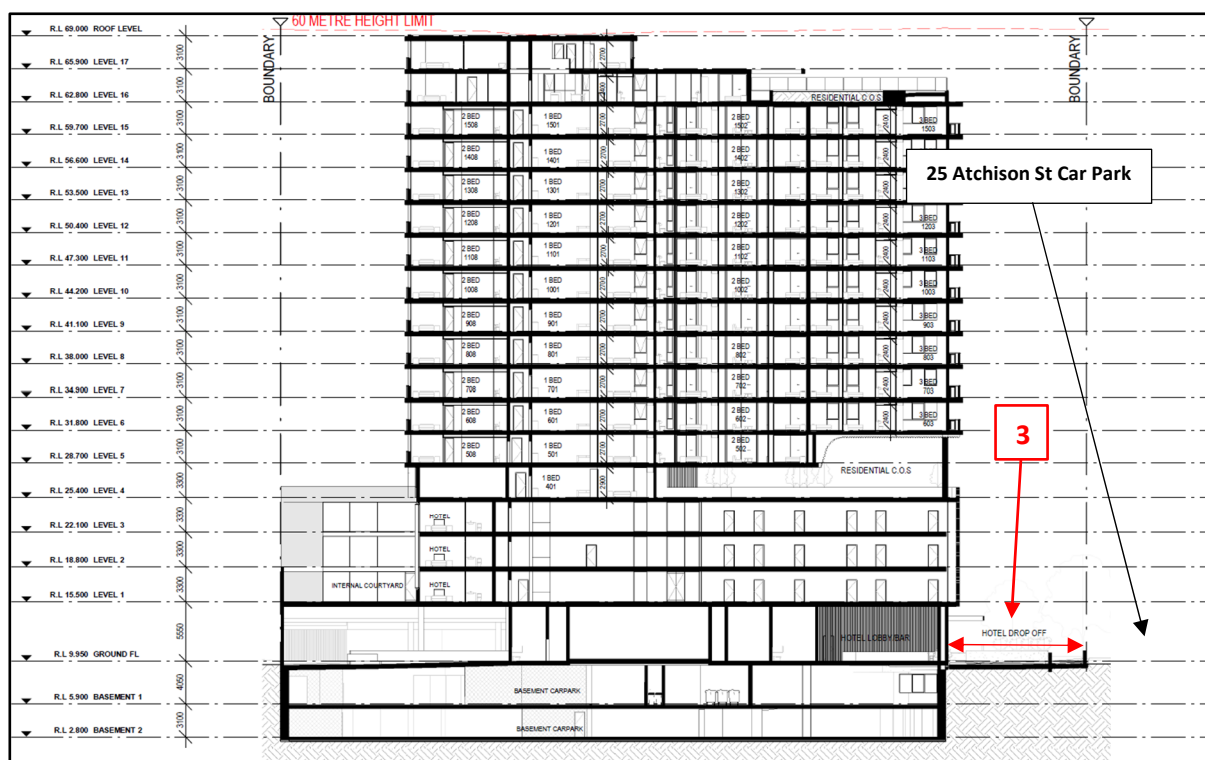


FIGURE 13 NORTH-SOUTH PROFILE SECTION (DWA)

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

- **Variation 1: 25 Atchison Street (Ground Level - West):** Clause 8.6(2)(a) requires there is no separation between neighbouring buildings up to the street frontage height. The proposed development includes a rear car park podium built form at zero metres from the corresponding boundary, however, the neighbouring building (Hatch Building) is currently setback from the common boundary in the order of 3.5 metres. Therefore, no separation between buildings is able to be achieved here. Notwithstanding, no unacceptable environmental impacts are anticipated as a result of this variation, given the commercial interfaces.
- **Variation 2: 27 Atchison Street (Ground Level - West):** Clause 8.6(3)(b) requires that, if a building contains a dwelling, all habitable parts of the dwelling including any balcony must not be less than 16 metres from any other part of any other building. The adjoining 27 Atchison Street building includes residential (balcony) only 5.88 metres from the common western boundary, and the proposed development adopts a rear car park podium built form at zero metres. Therefore, the 16 metres building separation has not been achieved. To achieve this, a significant building setback would need to be implemented for the rear podium, which is inconsistent with current-day strategic planning and development standards. To this end, the proposed development has been designed mindful of this residential interface, and included a stepped/tiered podium at the rear with integrated landscaping in order to provide some visual relief for existing neighbouring residences.



- **Variation 3: 25 Athison Street (car park of Kenny Street - North):** Clause 8.6(2)(a) requires there is no separation between neighbouring buildings up to the street frontage height. There is no current building immediately north of the subject site – just a car park accessed from Kenny Street. The proposed development adopts a 12 metre setback for the ground level and podium at this interface, due to an existing stormwater easement and associated overland flow flood path which bisects the northern edge of the subject site. Therefore, it is physically unable to provide no separation to this boundary edge as required by the development standard. Nevertheless, it is considered that providing a separation at this boundary will assist in maintaining acceptable flood conditions and associated environmental impacts.

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

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

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

- 1. The objectives of the standard are achieved notwithstanding noncompliance with the standard (First Way)*
- 2. The underlying objective of purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way)*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way)*
- 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way)*
- 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

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



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

Objectives of the 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 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.

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

The northern setback for the podium is necessary on environmental grounds (to control flooding and retain an existing legal stormwater easement) and the design is responsive to this separation created. This building separation is unavoidable in terms of streetscape character and appearance. For this purpose, the architectural rhythm and expression of the northern-east corner of the podium has been accentuated and highlighted with the inclusion of a recessed and inverted sculptural element, so as to create its own corner appearance in response.

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

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



existing and newly constructed. As explained in the design excellence statement prepared by DWA –

The proposal incorporates attractive and well-considered architectural design, materials and details which reflect the proposed high-quality mixed-use commercial, hotel and shop top housing development.

The proposal includes well-articulated façades which establish a sense of interest through volumetric interplay of various materials and textures.

The podium is defined by the vertical framework and brick portal grid. The brickwork feature on the podium will create a visual and landmark feature.

Individual architectural elements are further defined through the application of high-quality materials to the façade.

The proposed building form is appropriate for the future streetscape of Kenny Street, which is intended to accommodate future development of comparable bulk, scale and appearance

The podium and tower stepped over provides a visually interesting built form.

The proposal has been designed to incorporate and engage with the existing establishments such as the CBD and Wollongong Central Shopping precinct.

The proposal integrates continuous pedestrian pathways, high quality materials and features into the adjacent public domain.

The building is design with high-quality materials and textures which provide a high degree of visual interest. The public domain and podium will provide a high quality, landmark.

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

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

At the interface between the western residential and commercial buildings towards the rear boundary, the visual appearance of the podium ground level has been consciously prepared based on the proximity interface proposed. As aforementioned, the western face of the ground level podium element has been recessed and tiered with planting, so as to provide visual relief



for adjoining residents and occupiers. Extensive landscaping treatments and garden podium plantings are provided at this lower level on the western façade so as to soften, articulate and provide added visual interest and appearance. At all levels above, the visual appearance of the western façade has been broken up and articulated with vertical screenings to living room windows and balconies – accommodating aesthetic interest and privacy outcomes at the same time. The setback of the rear upper levels of the podium and the residential tower above is greater than the minimum building separation required under Clause 8.6, which is a direct response to these adjacent buildings being within close proximity of the western boundary.

Above 45 metres, the building steps in at a certain point on the northern side, but retains the common horizontal building line to the south. However, this is a deliberate and purposeful architectural response to how this building presents above 45 metres, as it has been designed to create a linear tower building form (without the ‘wedding cake’ design appearance). It is considered that to step the building in on both the northern and southern sides at 45 metres, would result in an inferior urban design outcome when it comes to visual appearance.

Privacy

There are no privacy concerns to be considered in relation to the northern interface, given there is no current building at this edge – simply an at grade car park. The privacy for development to the north is created regardless as a result of the podium setback (due to easement and flooding), which will result in an improved environmental outcome on privacy grounds nonetheless.

Privacy has been considered specifically in the design response shown in the architectural interface treatment to these corresponding side boundaries to the western elevation (with appropriate and compliant setbacks for the hotel rooms and upper levels building line). At the podium level, elevational interface with the rear is more active in terms of communal open space, but not in a habitable sense, and the separation distance between this space and adjoining Atrichson Street buildings is completely appropriate from a privacy perspective. Again, extensive landscaping, planters and screening is provided throughout this western portion at the lower level to respond to the adjoining residential building so as to ensure that privacy is not an issue of concern, whilst the upper level interfaces are mitigated by virtue of hotel setback, design, orientation and screen elements. The internal layout of the rooms attempts to minimise overlooking with the careful location of window and door openings, whilst the size of external balconies also help maintain such visual separation.

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

For the most part the proposed development is consistent with much of the ADG criteria, when considering both non and habitable faced interface treatments proposed to ensure appropriate



levels of all round privacy are achieved. The proposal is consistent with the separation distances outlined in the ADG, which prevail pursuant to SEPP 65.

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

Solar Access

Having a setback at the northern edge of the podium will improve the solar access, than otherwise could be provided by a built to boundary podium to this edge.

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

A SEPP 65 Compliance table has been provided by DWA Architecture and is attached to the DA submission package for Council's consideration. In terms of overshadowing impacts to the western buildings, a comprehensive solar analysis was conducted by DWA to discern the nuanced differences between the previously approved high-rise development under DA-2022/14 and this subject new DA before Council. Refer to DWA Drawing No. 096 and 096a attached to the application resubmission. The analysis focused on quantifying shadow patterns during critical morning periods, specifically between 9 AM and 11 AM during the winter solstice. Utilising built form suns eye modelling, the comparison revealed variations in overshadowing impacts on adjacent buildings, necessitating a refined approach to the proposed built form.

For this purpose, the proposed tower forms have been meticulously refined to taper their overall built form, thereby facilitating enhanced solar penetration to residential towers situated west and southwest of the development during morning hours. This has resulted in a redistribution of solar access among affected buildings and apartments (increased overshadowing affectation versus reduced affectation in part). As shown from the analysis provided, the proposed development incorporates some in part increases in overshadowing at 9 AM during the winter solstice, however, provides for notable increases in solar access to various buildings between 9:30 AM and 10:30 AM (compared to overshadowing impacts approved under DA-2022/14).

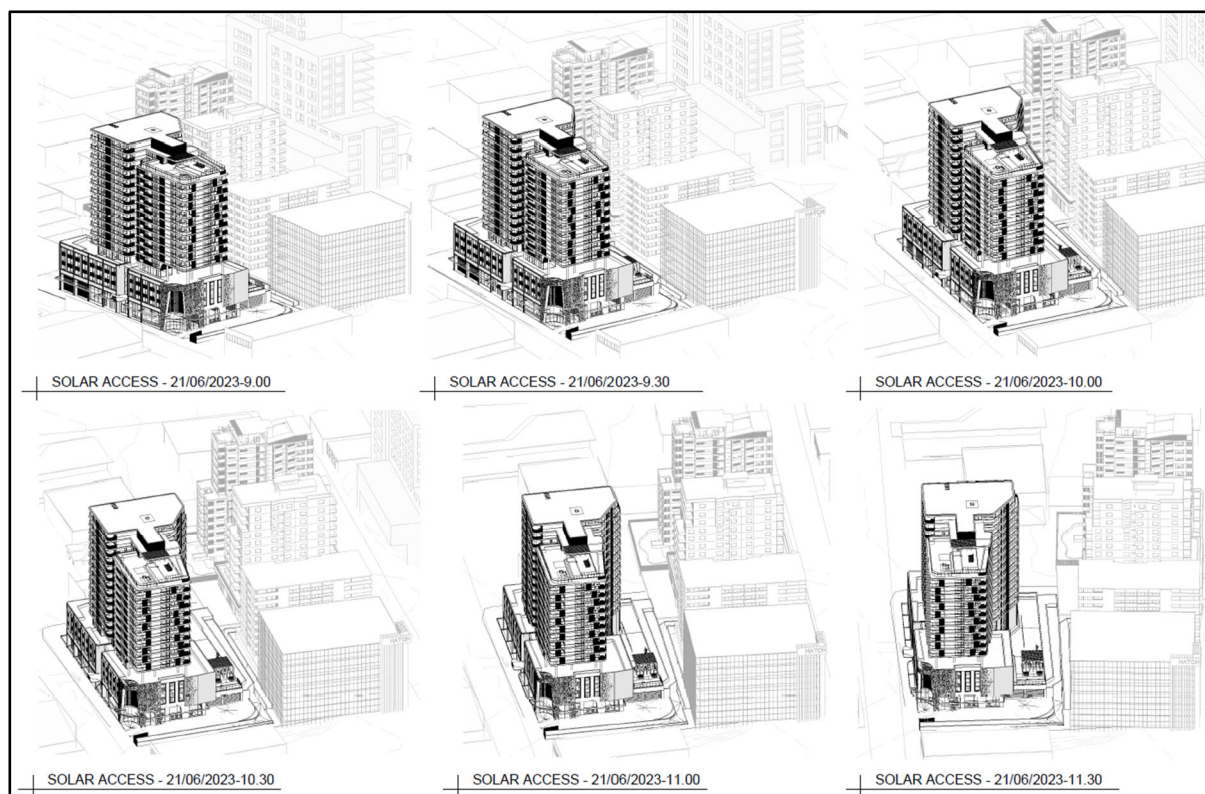


FIGURE 14 SUNS EYES SOLAR ACCESS DIAGRAMS (DWA)

The proposed refinement in built form represents a judicious response to the inherent challenges posed by high-density urban environments. It is imperative to recognise that in such contexts, absolute elimination of overshadowing impacts is unfeasible. However, the proposed amendments and tapering of the built form demonstrates a commitment to minimising adverse effects, while optimising urban amenity. This equitable redistribution of solar access impacts, coupled with the acknowledgment of the broader context of high-density development, underscores the acceptability of the proposed design amendments from both a planning and urban design perspective.

Overall, the findings of the solar analysis served as a catalyst for a proactive urban design response aimed at mitigating overshadowing effects while optimising solar access for neighbouring developments where possible. Importantly, the overshadowing impacts created as a result of the building separation variations at ground level to the western boundary are limited/negligible. In an evolving urban landscape, it is considered that the proposed development embraces a balance of competing interests to foster a resilient and liveable built environment for both future residents and existing neighbours.

Again, in terms of building form, the setbacks proposed within the subject site are relatively compliant with the building separation criteria when viewed across the east-west axis (noting that the primary reason for non-compliance at the western lower level is due to the buildings to the west being too close (or not close enough) to the common boundary and non-compliant in their own right). As a result, it is considered that the massing of the built form from a planning perspective will be acceptable in terms of overshadowing accordingly.



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

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

Development Standard 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 at the Council Officer level 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 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 podium 'gaps' at ground level. 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 podium landscape character envisaged, having regard to the site's location within the City Centre, existing streetscape and applicable controls.
- **Contextual Considerations:** The response to the streetwall gap that must be created along the Kenny Street frontage (northern side – due to legal easement(s) in place and flood conditions) has been managed with a design response for improved public domain outcomes at the streetscape level, creating corner-like emphasis to the podium and opening up view lines for the hotel.
- **Economic Viability:** The proposed design has been massaged to integrate various built form interfaces surrounding the site, so that it can be redeveloped as a whole – promoting the orderly and economic use of the land. Strict adherence to the standards at the western edge would reduce built form coverage at ground level unnecessarily – inhibiting the economic viability of the proposed mixed use development.
- **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 communal open space and landscape opportunities to the rear, and assists in accentuating ground-level spaces and improving pedestrian engagement and activation of the public domain within Kenny Street. 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 hotel 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 and tourist 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.
- *To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.*

The proposed development includes 105 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 diverse podium design 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 in a transition area and high density location within the lower part of the City Centre, and the development will complement the commercial centre precinct. The land uses are ideal for the site's position in the centre's hierarchy surrounded by active transport, retail, office and other 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 hotel 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 DA for the demolition of existing structures and the construction of a new multi-storey mixed use development at Lot 1 & 2 DP 543836; Lot A DP 15464; and Lot 2 & 3 DP 555229, 22-30 Kenny Street, Wollongong. This request satisfies the requirements of Clause 4.6 of the Wollongong Local Environmental Plan 2009 (WLEP 2009) and demonstrates that compliance with the 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.