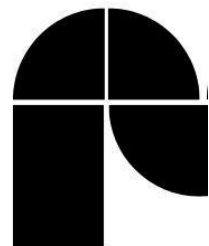




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APPENDIX B – ADDENDUM TO STATEMENT OF ENVIRONMENTAL EFFECTS

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Subject Site:

Lot 1 DP 53465, Lot 1 DP 60149, Lot 1 DP 548304, Lot 1 DP 505840, Lot 1 DP 621464
and Lot 402 DP 881597
163-171 Crown Street and 80-82 Church Street, Wollongong

Clause 4.6 – Exception to Development Standards Statement Variation to Building Separation Development Standard

Document Properties	
Author	L Rollinson
Co-author	-
Job Number	J125
Date	October 2024
Revision	B

Acknowledgment of Country

MMJ acknowledges the traditional custodians of the land to which this Statement of Environmental Effects applies. We pay our respect to all Aboriginal people of this land and to Elder's past, present, and emerging.

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Introduction

This Clause 4.6 Variation Request has been prepared to support a Development Application (DA) made with Wollongong City Council (Council) under Division 4.3 of the Environmental Planning and Assessment (EP&A) Act 1979, for a mixed-use development at 163-171 Crown Street, 80 & 82 Church Street, Wollongong. This request satisfies the requirements of Clause 4.6 of the Wollongong Local Environmental Plan 2009 in demonstrating that:

- a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

This Variation Request is seeking to vary *Clause 8.6 Building separation within Zone E2 Commercial Centre or Zone MU1 Mixed Use* of Wollongong Local Environmental Plan 2009 (WLEP 2009) and should be read in conjunction with the ADM/JT architectural plans provided with the DA. The proposal breaches the building separation development standards to the set by Clause 8.6(2), as follows:

- 1) ***Hotel Building (west) up to street frontage height.*** The proposed development adopts a 4 metre setback to the common boundary with 179-181 Crown Street, instead of a zero lot line boundary requirement. The proposed development seeks to establish a new lane through-link, and hence the setback proposed.
- 2) ***Hotel Building (east) above 45 metres.*** The building tower is built close to the eastern frontage with Church Street, which is approximately 19.5 metres wide, providing a physical building separation of this distance to 149-161 Crown Street. Above 45 metres, an additional separation of 8.5 metres would normally be required (28 metres separation in total), meaning a setback of 4.25 metres from this boundary is required under this clause (when equally sharing setbacks). This variation only relates to a small portion of the building above 45 metres, and it separated from the site to the each by a public road that will never be built out.
- 3) ***Office Building (south) and Club/Motel Building (north).*** There is currently a 13.6 metre building separation between these internal site buildings at the western end fronting Globe Way up to the street frontage height, whereas the clause requires no separation. Also, above the street frontage height, a small part of the eastern portion of these buildings are only 2.5 metres apart, where a 12 metre building separation is required. Better quality private domain, public domain and streetscape outcomes are the reason for these departures.

This variation statement 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 in the heart of the Wollongong City Centre area, on the western side of Church Street between the intersections with Crown Street mall and Burelli Street. The landholding is spread across 2 city blocks bisected by Globe Lane and bordered by Globe Way to the west. The subject site primarily incorporates 5 x existing allotments, detailed as follows:

Property description:	163-171 Crown Street (Lot 1 DP 60149; Lot 1 SP 53465; and Lot 1 DP 548304) 80-82 Church Street (Lot 1 DP 505840 and Lot 1 DP 621464)
Site Area:	4,799.9 m ²
Street frontages:	Crown Street Mall = 50.6 metres Church Street (north) = 36.235 metres Church Street (south) = 54.69 metres Burelli Street = 45.15 metres Globe Lane (north) = 51.96 metres Globe Lane (south) = 48.58 metres Globe Way = 57.75 metres
Existing development:	163-171 Crown Street (former DJ’s retail building - 4 storeys) 80 Church Street (former DJ-s car park building - 3 storeys) 82 Church Street (current City Diggers Club building - 3 storeys)

As above, the primary land to be developed includes the former DJs retail building and car park sites, as well as the current City Diggers RSL site. The old DJs building is currently vacant of any business operations or tenant, whilst the commercial car park remains an active use. The existing City Diggers RSL building is also an active current use.

The land is bound by Crown Street in the north, Burelli Street in the south, Church Street in the east, and Globe Way in the west. As aforementioned, Globe Lane currently bisects the landholding from the west, through to Church Street in the east. The existing former DJs building currently extends of the airspace for this part of Globe Lane, and also includes a basement service access link below Globe Lane (connecting the commercial car park to the retail building). Similarly, to the north above the airspace of Crown Street mall, an existing overpass pedestrian walkway links the former DJs retail building with the Wollongong Central shopping centre.

As part of the proposed development, it is further intended to acquire adjacent public land within both Globe Way and Globe Lane as follows:

Lot 402 DP 881597 (Globe Way)	Proposed Stratum subdivision acquisition to incorporate land into the subject site development. This relates to a small section of land above the the south-east edge of this existing allotment.	Site Area: 30.7 m ² approx.
Globe Lane	Proposed part road closure acquisition to incorporate land into the subject site development. This relates to part of Globe Lane directly between 163-171 Crown Street (north) and 80 Church Street (south). Any road closure proposal will be subject to an easement being granted providing a right of way and pedestrian access to the public at all times, so as to retain public access in perpetuity.	Site Area: 574 m ² approx.
Sub Total		Site Area: 604.7 m ²
New Site Area	That is, existing site area + proposed site area from acquisitions	Site Area: 5,404.6 m ²

The acquisition of further land results in a new site area for the subject site of some 5,404.6m² in total. Across the site, these existing buildings are currently built-to-boundary for the majority of the land coverage and is completely impervious throughout. Substantial built form and existing infrastructure is already in place. No vegetation exists within the subject site. Current vehicular access points are available to both Burelli Street and Church Street frontages, which in part are to be modified and retained as part of the proposed development.

The entire landholding is rectangular in shape and is nestled on the side of a ridge that extends from MacCabe Park south of the site at the lower topographic level, up to the Market Square precinct at the higher topographic level in the north. This positioning within the urban landscape results in a notable crossfall across the property, from approx. RL 18.5 AHD at the norther Crown Street boundary down to approx. RL 11.2 AHD at the southern Burelli Street boundary (ie. 7.3 metre level difference from north to south overall).

The subject site area is outlined in the below survey plan extract provided by Masters Surveying.

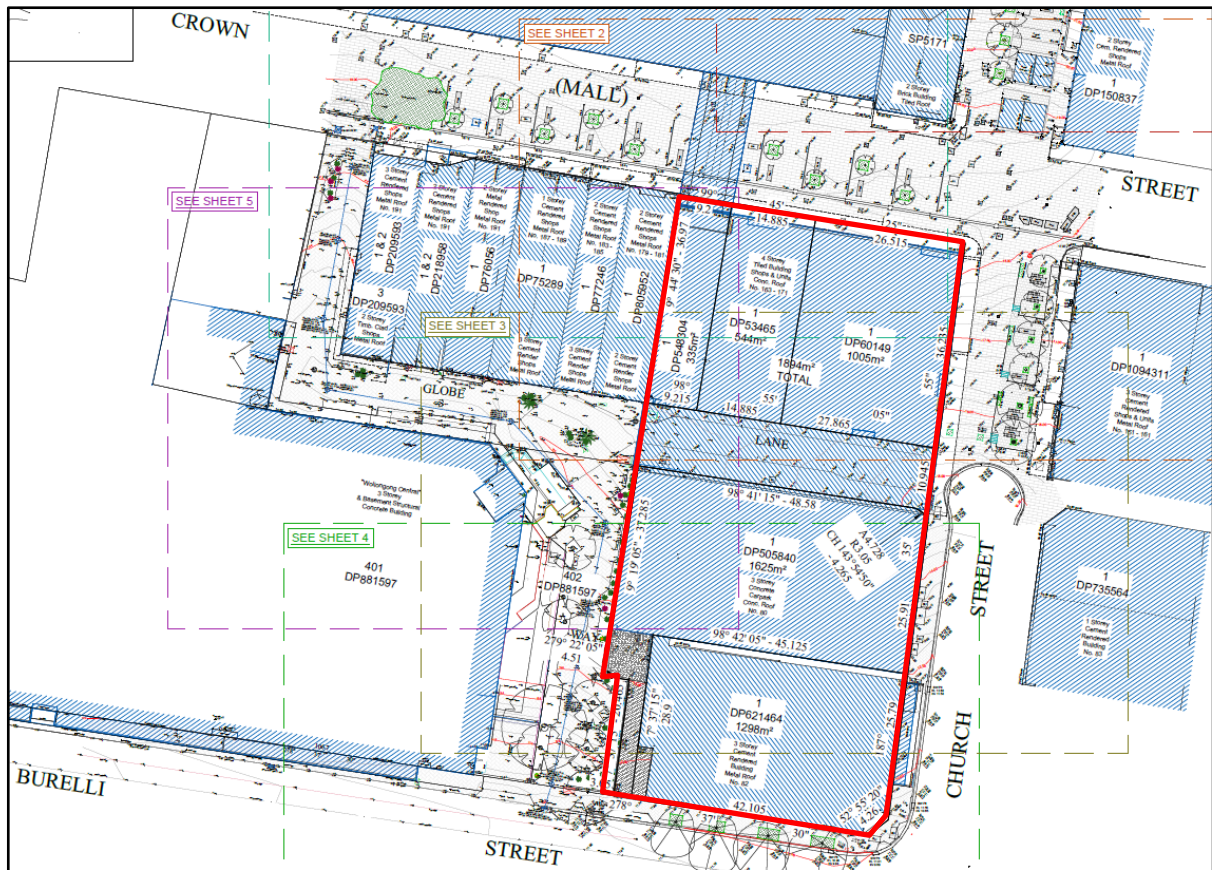


FIGURE 1: SUBJECT SITE SURVEY PLAN (MASTERS SURVEYING)

The site is located within an existing commercially orientated area that contains a mix of uses, including business, office, retail and service-related uses, being at the doorstep of the high profile and highly accessible Crown Street Mall location. Wollongong Central occupies lands to the west of the subject site, which is home to almost 200 stores, with leading brands in both retail and hospitality.

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

North	E2 Commercial Centre	Crown Street Mall, with 2-4 storey retail and commercial car park buildings immediately opposite
South	RE1 Public Recreation	Burelli Street, with MacCabe Park recreational area, and 2 storey commercial building directly opposite
East	E2 Commercial Centre	Church Street, with 2-3 storey commercial premises opposite, including Central Chambers, former Sneakers building and former Greater Union cinemas building

West	<i>E2 Commercial Centre</i>	<i>2 storey commercial shops fronting both Crown Street Mall and Globe Lane, with Wollongong Central shopping centre surrounding. Globe Way is also adjacent to the west as aforementioned</i>
------	-----------------------------	--

The visual context is shown in the Subject Site Context Plan extract prepared by ADM/JT below.



FIGURE 2: SUBJECT SITE CONTEXT (ADM/JT)

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 identified, Crown Street is the main retail mall of the City Centre. Buildings generally present a 2-3 storey form to the street frontage and provide for active retail frontages. The mall is the primary pedestrian throughfare of the CBD and spans two city blocks between Keira Street (west) and Kembla Street (east). The mall is quite active throughout the middle of the day (most days weekly), however, is devoid of active uses at night. Much of the mall is tired by virtue of traditional buildings in place, is in much need of stimulus.

Globe Lane contributes a more intimately scaled pedestrian space to the City Centre. The western end of the lane has developed to provide lively entertainment venues that contribute to the nightlife of the city. The eastern end of the lane, adjoining the subject site is void of activity and enclosed by a dark undercroft, created by the existing vacant department store building that bridges above the lane. Prior to its closure, both pedestrian and vehicular activity were generated by the department store. However, the store interface with the lane provides little contribution to the quality of public domain.

Globe Way is a more generously proportioned pedestrian lane that provides a connection to Burelli Street and MacCabe Park. There is no activation of existing uses onto this lane whatsoever, with a green wall edge currently provided to the subject site car park building (east), and small bar elevated above the lane (west).

Public transport opportunities via bus services are available close by to the south on Burelli Street, whilst train services are available from Wollongong Train Station approximately 550 metres south-west.

Proposed Development

The proposed development is outlined within the accompanying Statement of Environmental Effects Report and is to be known as 'The Globe' project.

The Globe project seeks development consent for the proposed construction of a new mixed-use multi-storey development incorporating a commercial building, hotel building and registered club building with motel accommodation, together with basement car parking, Stratum subdivision, part road closure, lot consolidation, drainage, landscaping, service infrastructure and associated part public domain

upgrade works (in various stages) at 163-171 Crown Street and 80-82 Church Street, Wollongong.

The Globe development details are identified within the architectural drawings prepared by ADM/JT Teece.



FIGURE 3 SUBJECT SITE PLAN EXTRACT (ADM/JT)



FIGURE 4 ARTIST IMPRESSION EXTRACT – CROWN STREET MALL/CHURCH STREET INTERSECTION (ADM/JT)

Applicable Environmental Planning Instrument & Development Standard

The applicable Environmental Planning Instrument subject to this Variation Request is the Wollongong Local Environmental Plan 2009 (WLEP 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) of the LEP.

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...”

In considering the above-mentioned building separation distances, it is common practice to incorporate half the required separation distance as a boundary setback within the subject site. For example, if a 12 metre building separation is required between commercial buildings above the street frontage height, then it is common practice to allow a 6 metres setback within the subject development, assuming the adjoining property will allow for a 6 metre setback in turn when that is redeveloped.

Effectively this clause requires that any development up to the street frontage height be built to boundary either side. Above street frontage height and below 45 metres, the building must be setback a minimum of 6 metres from the corresponding side boundaries (i.e. half the requirement to achieve the 12 metre building separation between buildings where a site adjacent is undeveloped), or 14 metres from the corresponding side boundary where the building is above 45 metres (half the requirement of 28 metre building separation between buildings where a site adjacent is undeveloped). These setbacks ensure that the building separation distances are equitably shared between development sites.

Objectives of the Zone

The site is zoned E2 Commercial Centre and the proposed *Hotel or motel accommodation, Office Premises and Registered clubs* 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. The proposed development generally complies with the development standards set out under Clause 8.6(2), apart from the following:

- 1) ***Hotel Building (west) up to street frontage height.*** The proposed development adopts a 4 metre setback to the common boundary with 179-181 Crown Street, instead of a zero lot line boundary requirement. The proposed development seeks to establish a new lane through-link, and hence the setback proposed.
- 2) ***Hotel Building (east) above 45 metres.*** The building tower is built close to the eastern frontage with Church Street, which is approximately 19.5 metres wide, providing a physical building separation of this distance to 149-161 Crown

Street. Above 45 metres, an additional separation of 8.5 metres would normally be required (28 metres separation in total), meaning a setback of 4.25 metres from this boundary is required under this clause (when equally sharing setbacks). This variation only relates to a small portion of the building above 45 metres, and it separated from the site to the each by a public road that will never be built out.

- 3) **Office Building (south) and Club/Motel Building (north).** There is currently a 13.6 metre building separation between these internal site buildings at the western end fronting Globe Way up to the street frontage height, whereas the clause requires no separation. Also, above the street frontage height, a small part of the eastern portion of these buildings are only 2.5 metres apart, where a 12 metre building separation is required. Better quality private domain, public domain and streetscape outcomes are the reason for these departures.

With regards to the actual street frontage height, the proposed development includes a general two storey effective street frontage height to all street frontages, apart from Burelli Street and the lower end of Church Street, which is five storeys. These areas in question are extracted below.

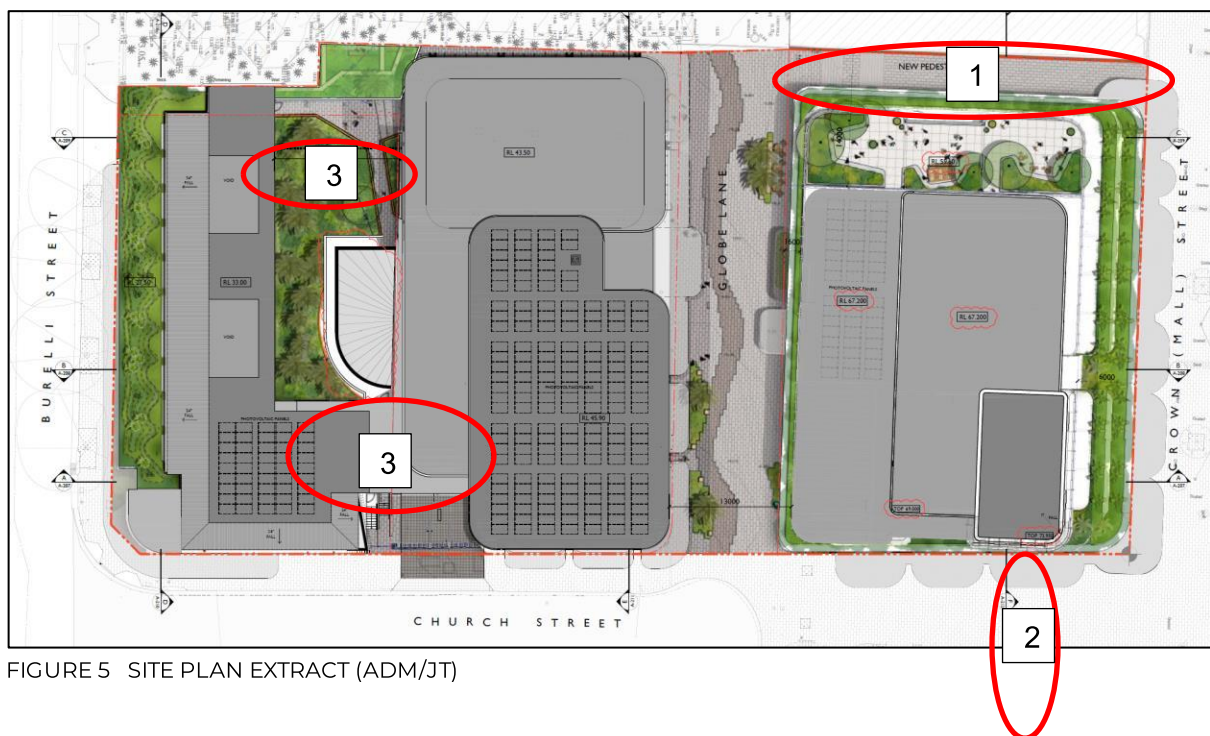


FIGURE 5 SITE PLAN EXTRACT (ADM/JT)

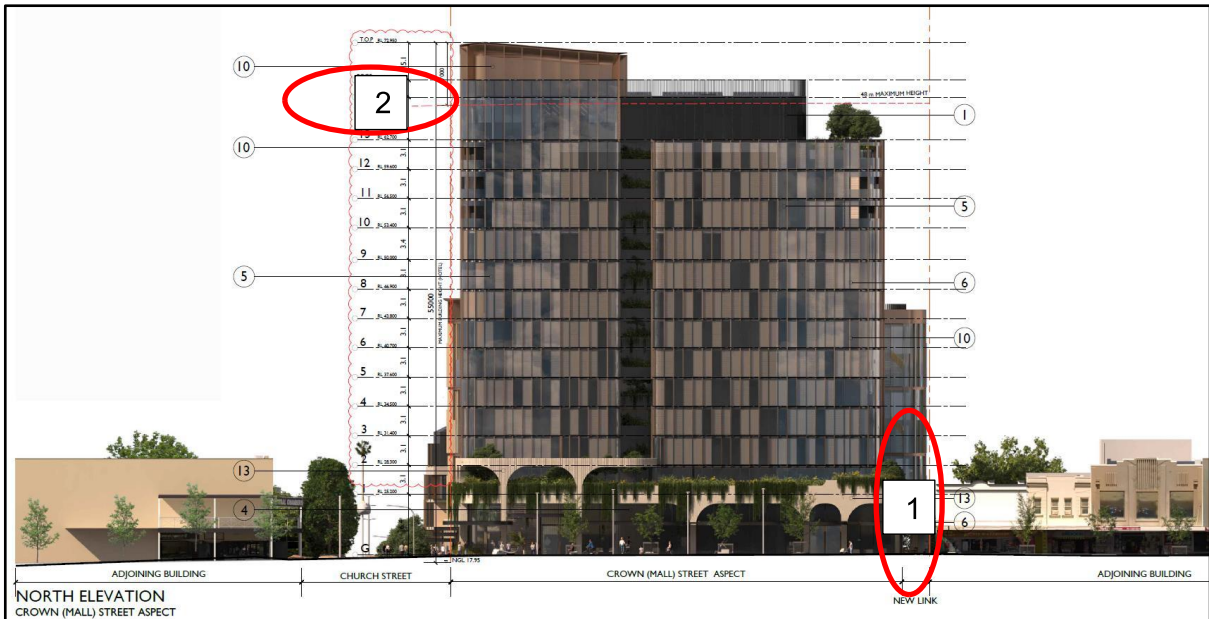


FIGURE 6 NORTH ELEVATION EXTRACT (ADM/JT)



FIGURE 7 EAST ELEVATION EXTRACT (ADM/JT)

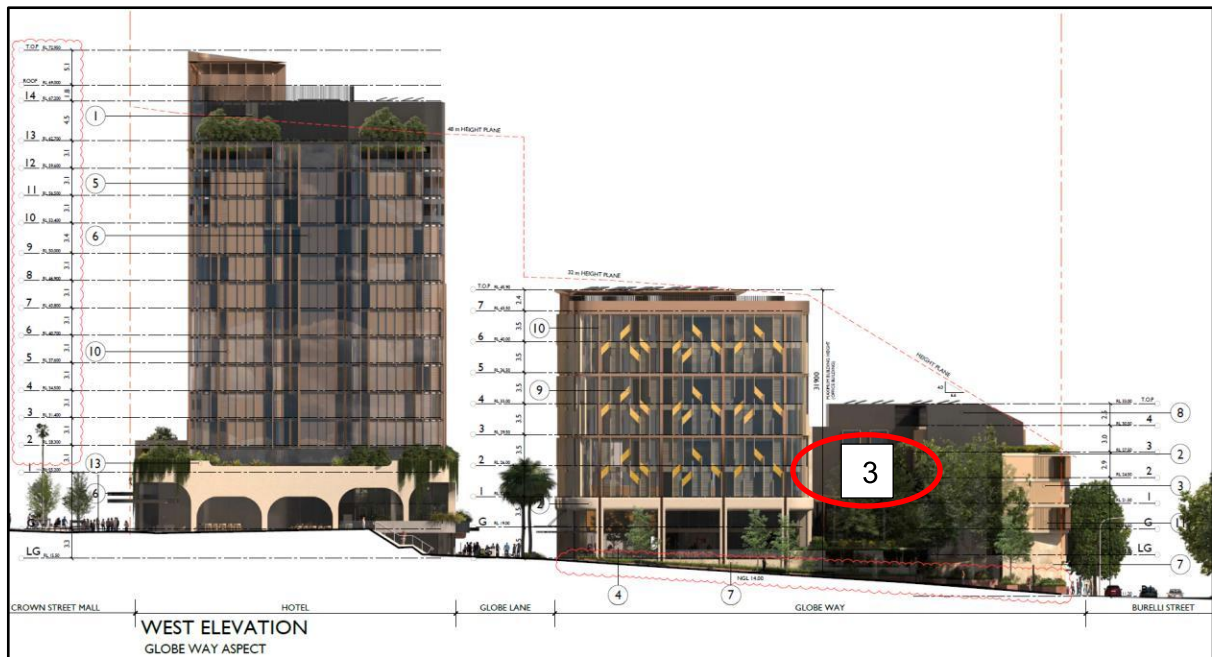


FIGURE 8 WEST ELEVATION EXTRACT (ADM/JT)

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

- *Variation 1:* The creation of a new site link/lane along the western boundary at the ground level of the hotel building will improve sight lines and pedestrian connectivity down to Globe Way and onto MacCabe Park. Increased pedestrian connection is likely to result in increased street activation, and will provide for a far better public domain outcome than otherwise created with a street wall at this location.
- *Variation 2:* From an architectural design quality perspective, a thoughtful initiative was made by the Project Architects to accentuate this tower at the highest point of the site to achieve a better urban design outcome for and from development. The design response accommodates a tower form that has been pulled to the corner position on Church Street, which results in a better planning outcome for the site and locality in terms the existing streetscape and urban setting. Additionally, this tower position will unlikely restrict the site to the direct east of Church Street from being substantially redevelopment, given the physical separation provided from built form by the public road corridor.
- *Variation 3 (east side):* The architectural design response was to create a continual street wall along Church Street and show the development as an integration of building materiality between the club/motel building and office tower. The collective design of these buildings together in the one proposal has enabled the rhythm of the streetscape to flow, whilst at the same time creating separate towers/uses that will not conflict with each

other. This is deemed to provide a superior urban design outcome along the Church Street frontage.

- *Variation 3 (west)*: There is a commercial need to separate the buildings at the Globe Lane frontage, due to the function of the club facilities (natural ventilation for outdoor gaming areas) as well as balancing a transition in grades throughout Globe Way. It was deemed a more superior public domain outcome would be to separate the buildings at this west elevation and allow for enhanced landscape zone between, whereby the public domain of Globe Way would be connected to the private landscape domain as a feature of the development. If these were separated developments (ie. buildings not integrated in the one development), the building separation required would be 12 metres and this is exceeded in this instance.

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** outlined in Wehbe, as follows.

Objective 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 architectural design, materials and detailing are of a high standard that is appropriate to the building type and location. The form and external appearance of the development will improve the quality and amenity of the public domain in the immediate vicinity of the site, particularly as the site is situated in a visually prominent location along the various street frontages and internal walkways.

'Design Excellence' has been the cornerstone of the new design process for ADM Architects and JT, and has been achieved through a rigorous design development process in collaboration with a team of specialist consultants. The development has been carefully designed to consider the urban interfaces, building mass and scale, solar access, view corridors, pedestrian and vehicle connectivity to the public domain, and aims to improve the quality and amenity of the public domain. Importantly, the proposal is consistent with the anticipated built form of the Wollongong City Centre.

The design of the proposed development places a strong emphasis on building orientation and articulation, which supports enhanced natural lighting, solar access,

and thermal efficiency. This has evolved from a comprehensive site analysis exploration exercise by the project designers which collectively considered by opportunities and constraints.

One of the site opportunities which results in a better design outcome for the site was the redistribution of bulk across site having regard to the site's location on prominent corners within the City Centre, existing streetscape connectivity and applicable controls. In sculpting a design response, connections and sight lines were used to establish a new pedestrian link at the ground level along the western side of the hotel to connect Crown Street Mall down to Globe Lane (thereby improving connection through to MacCabe Park). This also involved a 'pull back' of the Globe Lane corner to open up view lines from Crown Street Mall down into Globe Lane. See architect imagery below:

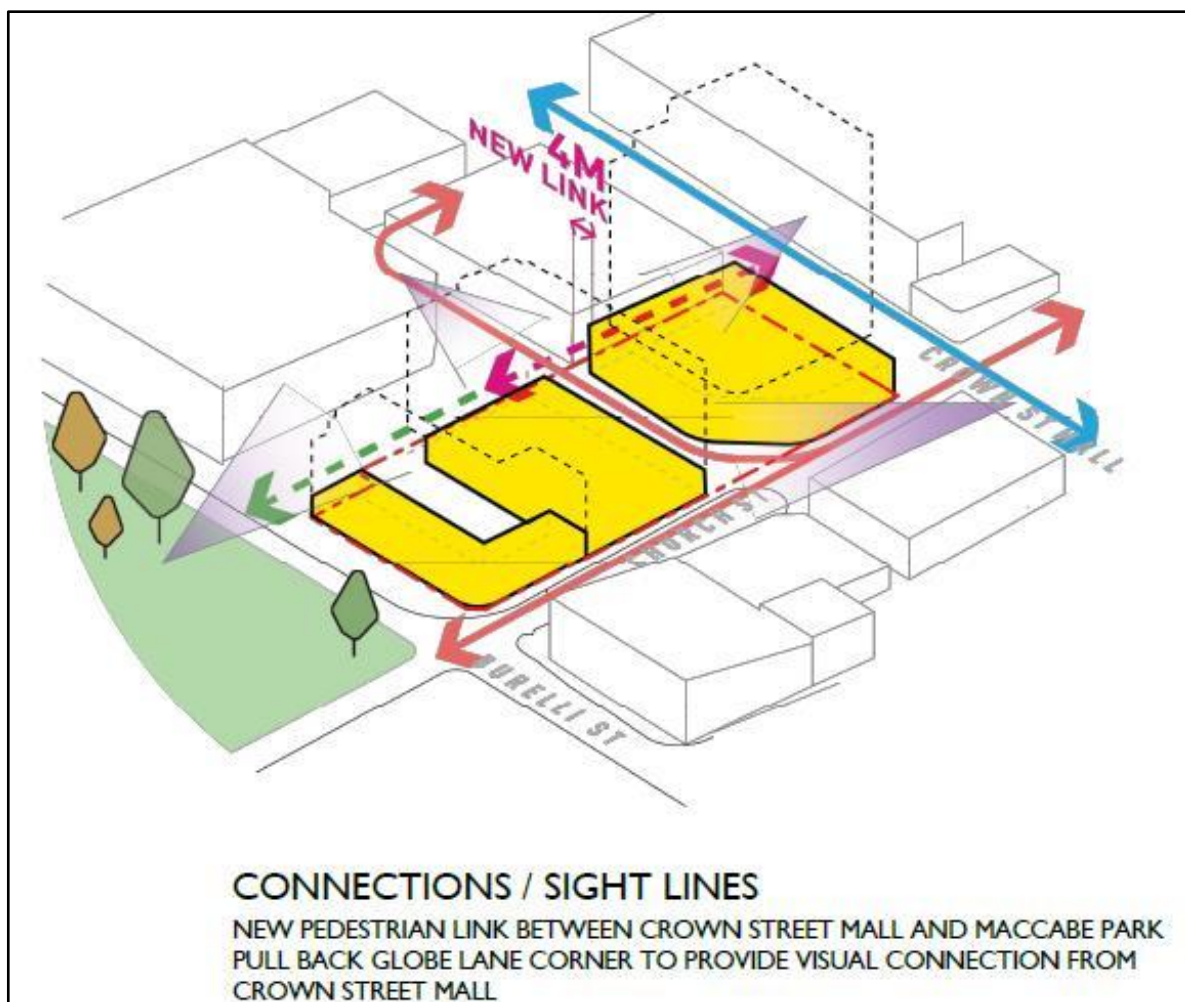


FIGURE 9 SCULPTING A RESPONSE EXTRACT (ADM/JT)

This sculpting of connections and sight lines at the lower levels essentially resulted in a public domain 'give back' around the base of the hotel, which in turn identified an opportunity to redistribute some of this building bulk that would otherwise be established at the base – to the tower of the development. Particularly in this instance with the development fronting the prominent corner of Crown Street Mall

and Church Street (in the heart of the CBD), an iconic architectural tower and accentuation of this corner façade inevitably flowed as an urban design response to pull the built form closer to the Church Street frontage. See architect imagery below:

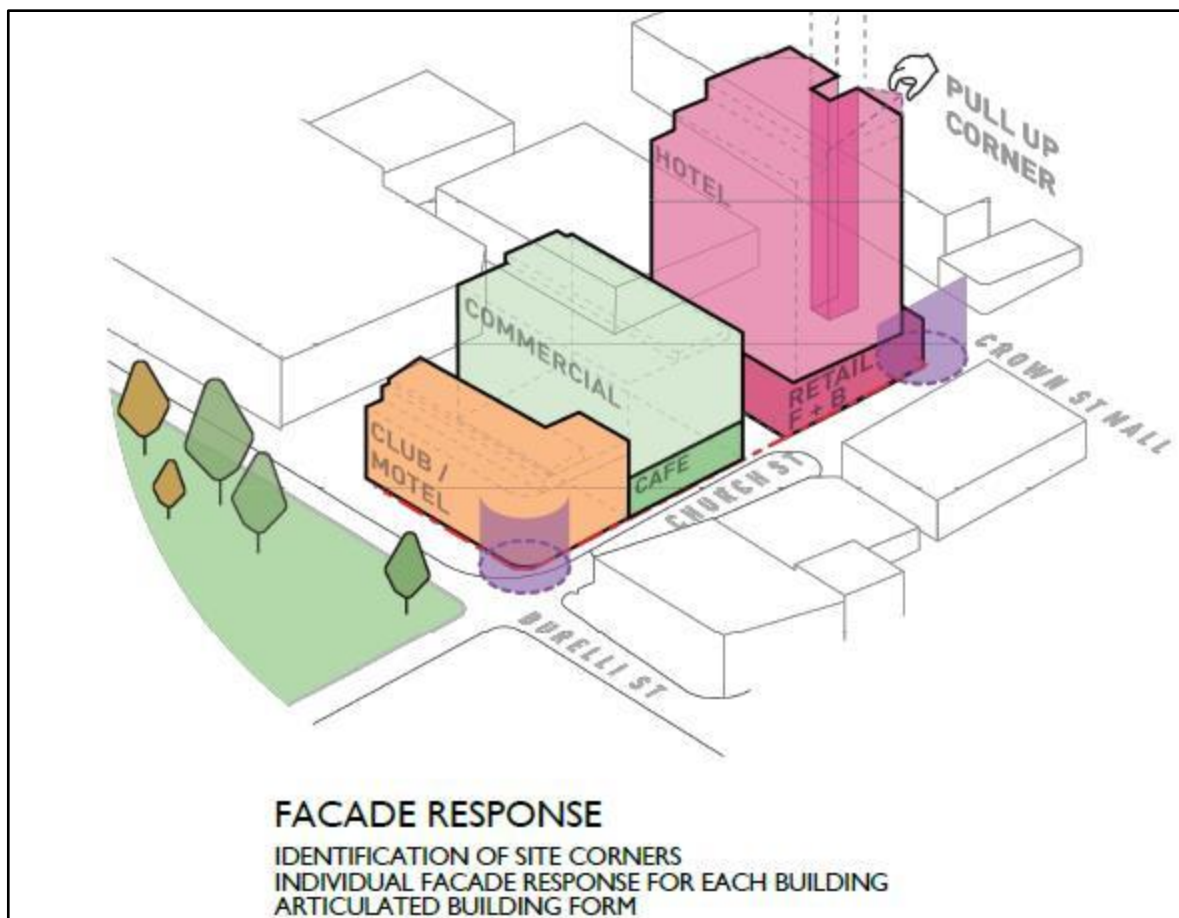


FIGURE 10 SCULPTING A RESPONSE EXTRACT (ADM/JT)

This has resulted in a better rhythm for the tower and overall improved visual appearance that would otherwise be created with a tower setback further from Church Street.

At ground level, the creation of a new site link/lane along the western boundary at the ground level of the hotel building will improve sight lines and pedestrian connectivity down to Globe Way and onto MacCabe Park. Increased pedestrian connection is likely to result in increased street activation, and will provide for a far better public domain outcome than otherwise created with a street wall at this location. Visually, this lane will be enhanced with potential wall art and cultural connections, improving the public domain experience.

In addition to form and scale, the architects have selected high quality façade materials that complement and, where appropriate, enhance the architectural character and quality of the street articulation for the club/motel building. The integration of materiality at this elevation is cohesive and provides for a pleasant visual appearance. This is achieved through the selection of robust and durable

materials that are fit for their public context and are capable of retaining their appearance over time. The use of brickwork and the base/podium of the buildings acknowledges and responds to the materials of the surrounding streetscape and the hierarchies of streets and spaces. The upper levels of the buildings forms use glass curtain walls and screening elements in polished metal materials that will provide a deliberate contrast with the masonry base. It is expected that care and attention in the architectural detailing will ensure that the design intent and quality is maintained in the buildings execution, enhancing the visual amenity of the built environment.

Additionally, the visual appearance of the Globe Way public domain will be enhanced by this variation, to allow for building separation and a landscaped zone between the club/motel and office building at this western elevation.

The built form and massing of the proposed development has been mindful of not creating adverse impacts on view corridors and there are no significant view corridors to be impacted. Wollongong City Centre provides for special views between the coast and escarpment, and these will not be negatively impacted as a result of the proposal. The proposed development does not block views to any existing tops of major buildings or structures as seen against the sky or backdrop of the escarpment or foreshore. This is demonstrated in the view analysis montages prepared by ADM/JT and including in the architectural package provided for Council's consideration (refer Drawings A-016 to A-023).

Below is a contextual aerial view extract of the built forms (approved and/or existing) surrounding the proposed development which should be considered in assessing view impacts.

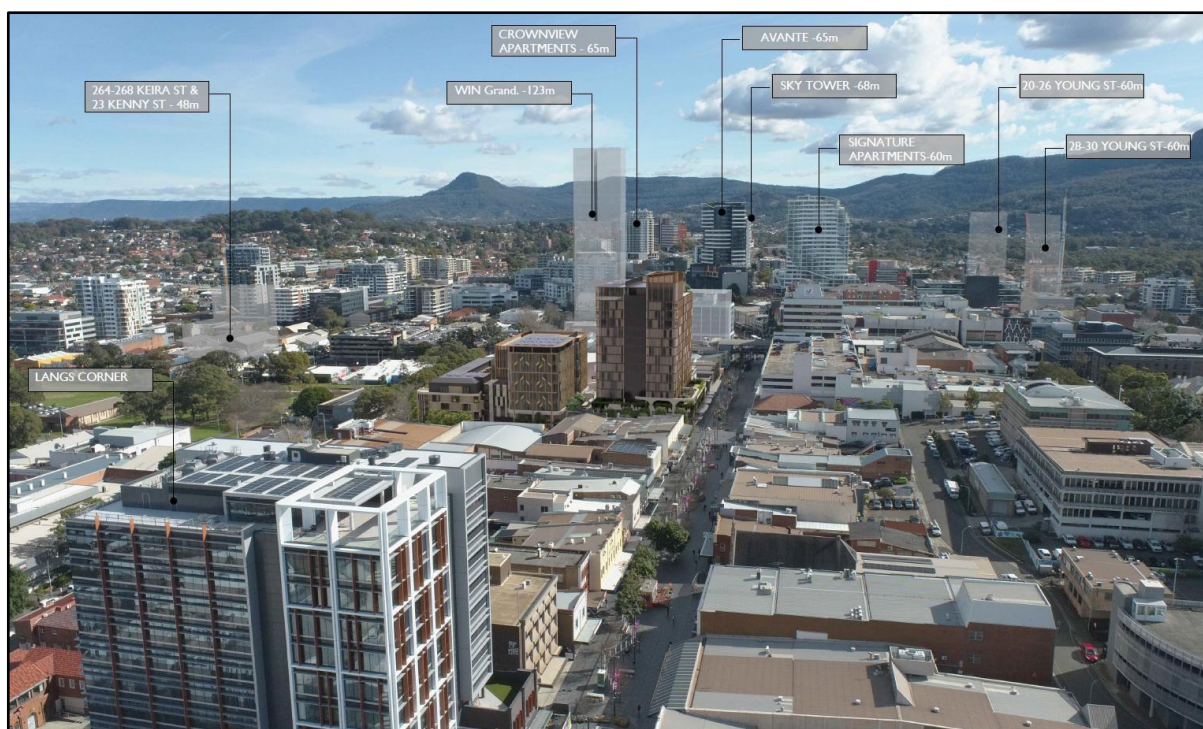


FIGURE 11 CONTEXTUAL AERIAL VIEW (ADM/JT)

The most critical or special view within the City Centre is that documented within Wollongong DCP 2009 Chapter D13 (*Section 3.10 Views and view corridors*), and identifies the view from Flagstaff Hill back towards Mount Kembla, over the top of the CBD. The site is within this view corridor as shown below.

The subject site is located in the heart of this view line corridor over the CBD, and the tallest and most visible tower form proposed on the site is the hotel building at the northern end (being 15 x storeys). Even with a breach of the building height development standard, the proposed building does not penetrate the ridgeline or negatively impact on the Escarpment backdrop, and in comparison to existing buildings such as 'Avante' and 'Signature' and approved WIN Grand buildings, the proposed development is of little visual impact from this primary view corridor. Thus, it can be justified that the proposed development detrimentally impacts on view corridors.

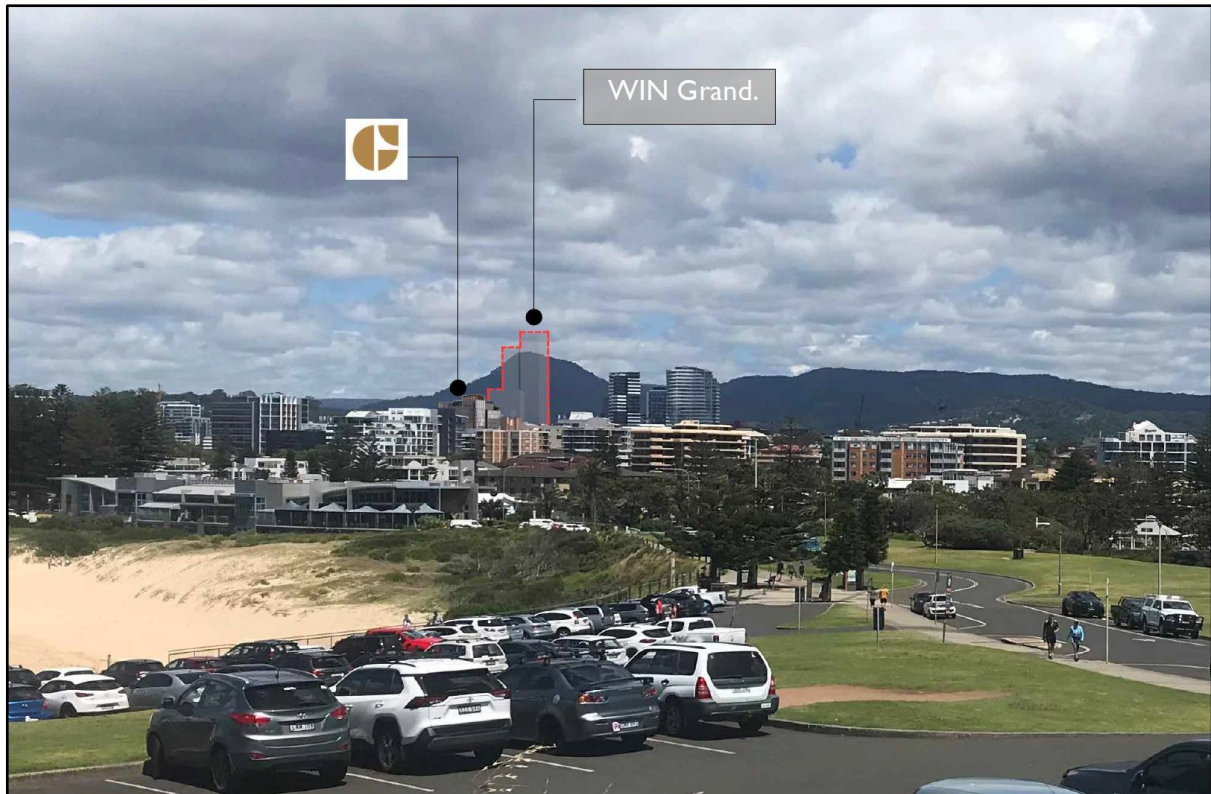


FIGURE 12 VIEW FROM FLAGSTAFF POINT LIGHTHOUSE BACK TOWARDS THE ESCARPMENT (ADM/JT)

Privacy

No additional privacy concerns will be created as a result of these variations to the building separation development standard. The creation of the new lane along the west of the hotel will interface with an existing building adjacent to the west (with no openings). Bringing the hotel tower closer to the edge of Church Street (for above 45 metres) will not contribute to any privacy concerns to properties further east (given these are unlikely to achieve a similar height at that level).

Additionally, the privacy considerations for interfaces between the club/motel building and the office building have been managed through smart integrated design, internally within the development.

The proposed variation can be justified relative to privacy impacts.

Solar Access

In light of this building height and form, the project architects have also been mindful of solar access to the public domain. Sun Plane Protection Map controls apply to the portion of land south of Globe Lane within the subject site (that is, the proposed club/motel and office buildings), given the development's proximity to MacCabe Park (south). Below is a cross sectional extract from the Architectural Plans (as viewed from west), showing how the proposed development has been stepped to comply with the sun access controls away from the Burelli Street.



FIGURE 13 CROSS SECTION EXTRACT SHOWING SUN ACCESS CONTROL LINE (ADM/JT)

Shadow diagrams are provided at hourly intervals mid-winter to investigate if the increased height of the hotel tower impacts on adjoining sites and the public domain. The analysis undertaken compares the proposed shadows against both the shadows cast by existing buildings and the shadows cast by a compliant building height envelope. As a result, the analysis confirms that the height and building separation non-compliances have no additional and/or detrimental impact on Maccabe Park between the hours of noon and 2.00pm mid-winter (refer to Architectural Drawings A-401 and A-402). Refer to below extract of midday overshadowing impacts provided by ADM/JT.



FIGURE 14 CROSS SECTION EXTRACT SHOWING SUN ACCESS CONTROL LINE (ADM/JT)

As shown above, MacCabe Park will not be detrimentally impacted by overshadowing as a result of the proposed development, and the solar access protect of this public open space can be maintained – even with a proposed height breach at the northern end of the site for the hotel.

Additionally, solar access to key pedestrian streets will be notably improved as a result of the proposed development, by removing the pedestrian bridge over Crown Street Mall, and removing the built form currently over the eastern half of Globe Lane. This solar access initiative was identified early on by the Project Architects through the master planning phase, when sculpting a response to contextual analysis was being undertaken (refer Architectural Plans).

The proposed variations are justified relative to solar access impacts.

On this basis, the proposed development has been assessed against the 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 Wa)

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

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.

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

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

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

- The variation results in a better urban design outcome for the site in terms of the redistribution of bulk across the land, having regard to the site's location on prominent corners within the City Centre, existing streetscape and applicable controls;
- The redistribution of bulk will allow for improved public domain outcomes at the streetscape level, creating a new site link west of the hotel and opening up view lines into Globe Lane from Crown Street Mall.
- The proposed design has been massaged to integrate various buildings on the site, so that it can be redeveloped as a whole which provides for an improved urban design outcome – promoting the orderly and economic use of the land;
- The architectural accentuation and positioning of this hotel tower to the edge of the highest point of the site will achieve a better urban design outcome for and from development;
- The site is of a sufficient width, depth and size to accommodate the proposed variations, without resulting in any significant adverse impacts on the public domain or any adjoining properties;
- 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*;
- Non-compliance with the standard will not result in any adverse environmental impacts. In particular, impacts of the development have been mitigated in relation to the overshadowing from the built form, having regard to the sun access plane control and MacCabe Park; and
- The development promotes significant direct and indirect economic benefits for immediate locality, and economic viability of City Centre.

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

Yes, the proposal will provide additional commercial space 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 environment, and will revitalise this part of the City Centre. Tourism accommodation will attract people to support business and retail, and the public domain and Connecting with Country outcomes with strengthen 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. The development has an estimated construction cost of \$230 million. It will result in an estimated net increase of approximately 1,171 FTE jobs generated and supported. Of these, 472 FTE jobs will be directly generated on site.

Overall, this is expected to generate an estimated annual visitor expenditure of \$30m per annum will be generated, of which \$15m is estimated to be retail spend.

- *To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.*

The proposed development will improve the amenity for pedestrians around the site and precinct, with a high level of accessibility provided throughout (greater than existing).

- *To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.*

Not applicable. No residential development proposed.

- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*

The new development promotes a mix of uses that will activate the local streets and attract pedestrian traffic. The upgrades to the public domain, together with reverse podium designs and active entries that invite the public into the private domain will further enhance the vibrancy of place.

- *To encourage development that is consistent with the centre's position in the centres hierarchy.*

The site is at an iconic location within the City Centre, and the development will become the beating heart of Crown Street Mall and associated laneways. The land uses are ideal for the site's position in the centre's hierarchy surrounded by retail and business.

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

As above, this project 'The Globe' will be a significant investment for Wollongong City Centre, and will include a new registered club for City Diggers, and at the same time replace redundant buildings and land uses with new contemporary and iconic commercially oriented buildings/uses. This will provide for much needed tourist and office accommodation to support this precinct as the business, retail and cultural centre of the Illawarra region.

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

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

Is the objection well founded?

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

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

Conclusion

This Clause 4.6 Variation Request has been prepared to support a development application for a mixed-use development at 163-171 Crown Street, 80 & 82 Church Street, Wollongong. This request satisfies the requirements of Clause 4.6 of the WLEP 2009 and demonstrates that compliance with the standard is both unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify varying the standard in this instance.

