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URBIS

CLAUSE 4.6 VARIATION REQUEST FOR HEIGHT OF BUILDINGS

WIN Grand

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1. INTRODUCTION

This Clause 4.6 Variation Request ('the Request') has been prepared on behalf of Birketu Pty Ltd ('the Applicant') and accompanies a Development Application ('DA') for a mixed-use development at the street block bound by Crown, Keira, Burelli and Atchison Streets in Wollongong City Centre.

The Request seeks an exception from the height of building prescribed for the site under clause 4.3 of *Wollongong Local Environmental Plan 2009* (WLEP 2009). The variation request is made pursuant to clause 4.6 of WLEP 2009. This report should be read in conjunction with the Statement of Environmental Effects and Response to Submissions Report prepared by Urbis. The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE, RtS and accompanying drawings.
- **Section 4:** identification of the development standard, which is proposed to be varied, including the extent of the contravention.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 6:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 7:** summary and conclusion.

The site contains three building height controls of 120m, 60m and 48m. Tower 3 intersects the 60m and 48m controls. At the south-eastern extent of the tower, the building protrudes through the 48m height plane by 7.75m. Tower 2 intersects the 60m and 120m controls. At the south-eastern extent of the tower, the building protrudes through the 60m height plane by 10.90m (the greatest extent of breach).

The reasons why strict compliance with the LEP height of buildings development standard is unreasonable and unnecessary are summarised as follows:

- The proposal is consistent with the objectives of the building height standard.
- The proposal is under the maximum FSR control and achieves an appropriate density and overall tower massing strategy for the site.
- There are site-specific circumstances which have required a different (non-compliant) building height approach for the site. Primarily, the variation results from the redistribution of massing across the site as a result of these considerations.
- At most parts of the site, the buildings are significantly under the allowable height limit. For example, Towers 1 and 2 could have both been positioned within the 120m building zone and built to this height, however this was deemed inappropriate. Primarily, the reason this was not explored was because the massing strategy sought to pull towers to the southern portion of the site, away from the sensitive heritage character of Crown Street. This strategy also had the benefit of creating a high amenity public through site link and reducing the visual impact of the tower forms from key public locations (as they were positioned at the 'low point').
- The variation allows for a stepped arrangement of building height on Burelli Street, which results in zero additional overshadowing to MacCabe Park at midwinter.
- Visual impact analysis has been undertaken from key public domain vantage points, including Flagstaff Hill, MacCabe Park and Crown Street. The results of this analysis indicate that the proposal will not generate any significant negative impacts and can be supported on visual impact grounds.
- View sharing analysis has been undertaken from key affected private domain vantage points. The results of this analysis indicates that the proposal, inclusive of LEP building height variation, represents a reasonable view sharing outcome having regard to the relevant LEP Planning Principles.

2. SITE CONTEXT

2.1. SITE DESCRIPTION

The site incorporates an entire city block bound by Crown Street to the north, Keira Street to the east, Burelli Street to the south and Atchison Street to the west. The site is approximately 1.308 hectares.

The site is made up of 28 individual parcels (the formal legal description is provided in the Statement of Environmental Effects submitted as part of this application). The site is referred to as WIN Grand. The site currently accommodates several mixed-use buildings of various scales and heights, with on-site carparking access off Burelli Street via Findlay Place, a one-way laneway which also provides direct access to rear loading areas.

Figure 1 – Site Aerial



Source: Urbis

3. PROPOSED DEVELOPMENT

A detailed description of the proposed development is provided in the Response to Submissions Report prepared by Urbis. The proposal is also detailed within the architectural, engineering and landscape drawings that form part of the DA.

The proposal is for the redevelopment of the street block.

The DA seeks consent for:

- Demolition of all existing buildings and structures on site, besides the Marcus Clark heritage building façade and The Grand Hotel facade, which will be carefully retained in accordance with specialist advice.
- Removal of 14 trees located internally within the site (the six mature street trees will be retained).
- Excavation to allow three levels of basement car parking. The basement will contain 496 car parking spaces and a loading dock.
- Erection of a series of buildings, with maximum heights including:
 - Tower 1 (Residential): 118.5m (39 storeys).
 - Tower 2 (Residential): 74.8m (23 storeys).
 - Tower 3 (Residential): 57.7m (17 storeys).
 - Commercial building: 34.9m (7 storeys).
 - The Grand Hotel + Exhibition Space: 16.7m (4 storeys).
 - Gym/pool building: 16.7m (4 storeys).
- Various land uses, comprising:
 - Residential accommodation (in a shop top housing configuration).
 - Commercial premises (business, office and retail premises).
 - Health and wellness facilities.
 - Entertainment facilities (cinema, performance and exhibition space).
 - Recreation facilities (pool and gym).
- Various ancillary works including landscape/hardscape improvements, including:
 - Publicly accessible central plaza, supported by various stairs, walkways and public lifts.
 - Various streetscape improvements, including tree planting and provision for a bus shelter.

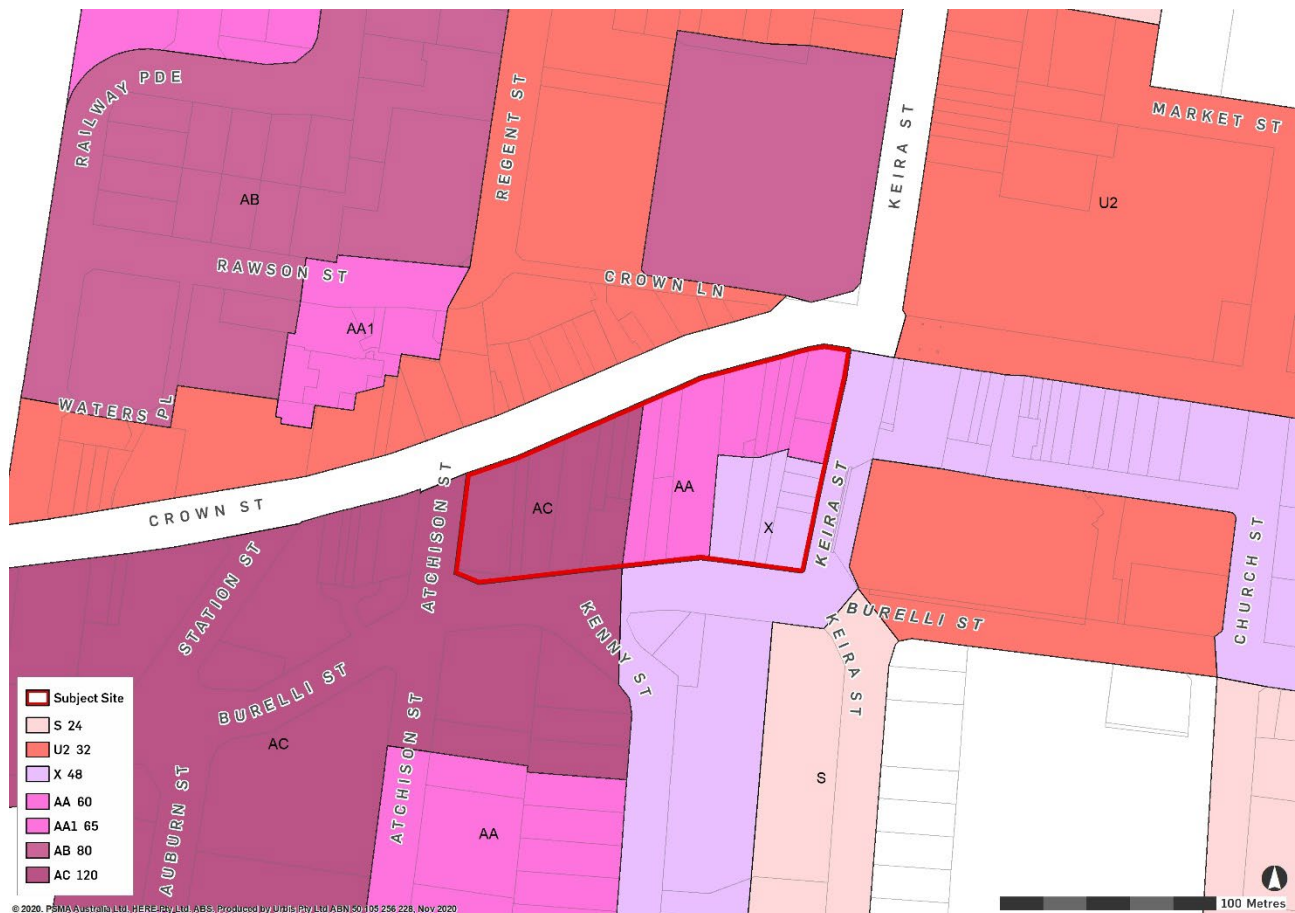
4. VARIATION OF BUILDING HEIGHT STANDARD

This section of the report identifies the development standard that is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in Section 6 of the report.

4.1. DEVELOPMENT STANDARD

Clause 4.3 of the WLEP 2009 provides the height of building development standard. The site contains three height limits – 48m, 60m and 120m moving east to west, refer to Figure 2 below:

Figure 2 – WLEP 2009 Height of Building Map



Source: Urbis

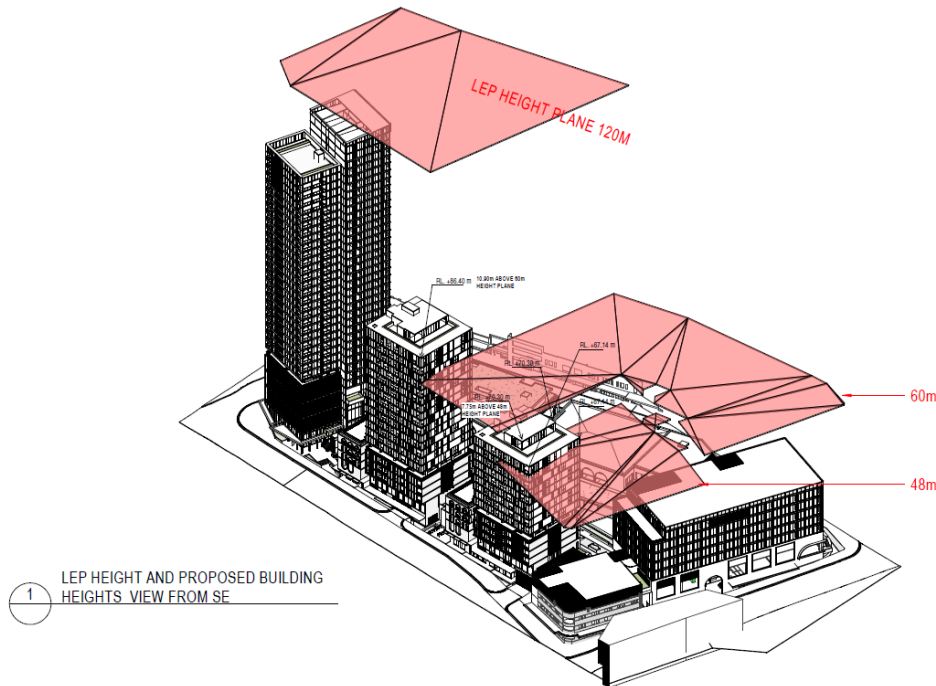
4.2. PROPOSED VARIATION TO BUILDING HEIGHT

The following variations to the maximum building height are proposed:

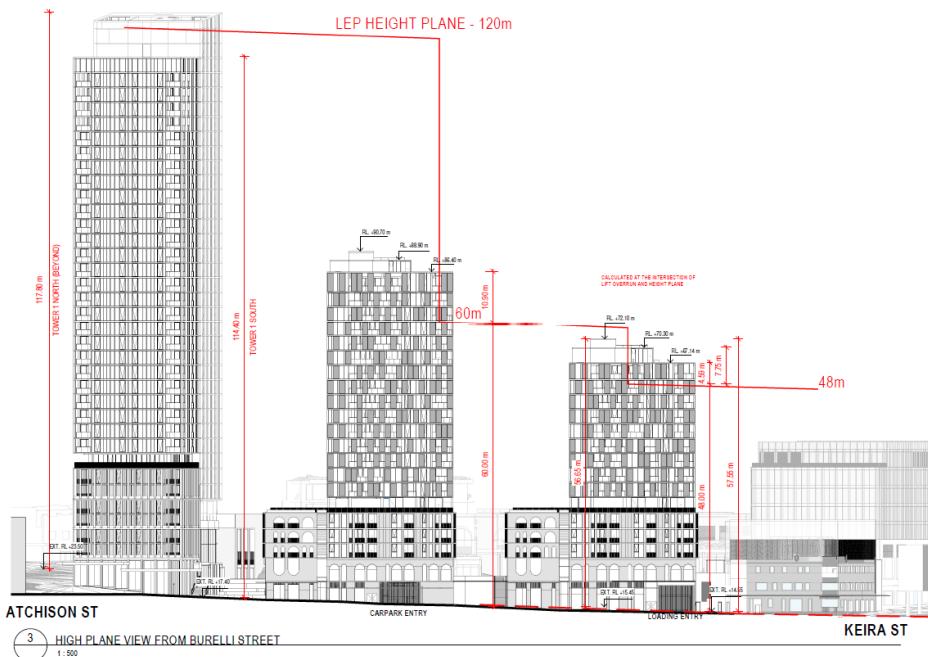
- Tower 2 – exceeds the building height control by 10.90m. The breach occurs at (approximately) the eastern half of the top two storeys of the building.
- Tower 3 – exceeds the building height control by 7.75m. The breach occurs at a small slither of the eastern end of the top four storeys of the building.

Refer to analysis prepared by BVN below:

Figure 3 – Extent of Variation



Picture 1 – Volumetric Analysis of Variation



Picture 2 – Drawing showing Extent of Breach

Source: BVN

5. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of WLEP 2009 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of WLEP 2009 are:

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

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

- (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.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2000 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The Secretary can be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This clause 4.6 request demonstrates that compliance with the height of building prescribed for the site in clause 4.3 of WLEP 2009 is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the height of building development standard be varied (subject to the applicant's position that such a request should not actually be necessary).

6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the height of building in accordance with clause 4.3 of WLEP 2009.

Detailed consideration has been given to the following matters within this assessment:

- Varying development standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

6.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The height of building prescribed by clause 4.3 of WLEP 2009 is a development standard capable of being varied under clause 4.6(2) of WLEP 2009.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of WLEP 2009.

6.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 4.6(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard to be achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also addresses the third method, that the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (*Initial Action* at [19] and *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]). Again, this method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

6.2.1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the height of building as specified in clause 4.3 of WLEP 2009 are detailed in Table 1 below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 1 – Assessment of consistency with clause 4.3 objectives

Objectives	Assessment
(a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved.	<p>The proposal complies with the maximum permitted FSR control. The design team have taken a 'whole of site' approach to massing, so the GFA/FSR is achieved in an alternative tower form to achieve a better urban outcome, which is described further below in Section 6.2.2.</p>
(b) to permit building heights that encourage high quality urban form.	<p>The proposal is considered to achieve design excellence, having regard to the criteria in clause 7.18 of the Wollongong LEP 2009.</p> <p>The scheme has evolved from a comprehensive urban design study, through a competitive design process, and subsequently a design integrity process, which has involved the independent review of the Wollongong Design Review Panel.</p> <p>The positioning of Towers 2 and 3 provides an optimal design outcome for the site and mitigates environmental impacts such as views and solar.</p>
(c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.	<p>Despite the non-compliance, Towers 2 and 3 and those buildings adjoining (both proposed on-site, and those on adjoining sites) will have access to views of the sky and receive solar access in accordance with NSW ADG requirements.</p> <p>The through site link (positioned centrally and to the north of the site), will provide significant public amenity.</p> <p>As discussed further below, if the built mass were 'pushed forward' (northward) within the 60m height zone, while potentially compliant, it would block sky view and solar access to the through site link, while also likely causing significant self-shadowing of apartments within the development.</p>

The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.

6.2.2. The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable (the third method in *Wehbe v Pittwater Council [2007] NSWLEC 827 [42]-[43]* as applied in *Linfield Developments Pty Ltd v Cumberland Council [2019] NSWLEC 131 at [24]*)

The objectives of the building height control (summarised above in Table 1) are better achieved by the proposed development compared with a potentially compliant scheme because:

- There are site-specific circumstances (described below) which have required a different (non-compliant) building height approach for the site. Primarily, the variation results from the redistribution of massing across the site as a result of these considerations.
- Locating taller buildings in the central part of the site would limit solar access outcomes and result in more south facing apartments.
- Orienting buildings on a north/south axis would result in the 'long face' of the building straddling the central public open space, which is an undesirable outcome.
- Locating towers at the southern end of the site creates a permeable through site link, which provides an important mid-block connection in the city centre, linking onwards to the train station. This is consistent with Council's desire to have a through site link included within the redevelopment of this street block.
- Locating a residential tower on top of the Marcus Clark heritage building would hinder the heritage and streetscape outcomes desired for this building and the traditionally lower-scale Crown Street interface.
- Locating buildings southward also leverages the existing topography and results in better views / sight lines to and from the site.
- Providing building forms with chamfers or multiple steps (to achieve compliance) is not considered to provide an optimal urban design outcome/response to the desired street conditions.
- Tower 2 could achieve a height of 120m under the planning controls. However, two tall tower forms are not proposed because the setback from Marcus Clark (heritage building) and tower separation would not have been achieved.
- The form of Towers 2 and 3 are deliberately planned to create a stepped arrangement of building height on Burelli Street (with consistent podium expression, resulting in a cohesive built form response).
- Studies were undertaken on what would be required to comply with the LEP height control, while maintaining the same (compliant) GFA yield. Such an outcome would result in a stepped tower arrangement, including chamfered high-rise levels of Towers 2 and 3 that lacks a 'natural' balance. The proposed outcome is a preferable outcome for the Wollongong skyline.

The extent of non-compliance does not result in unreasonable and/or significant environmental impacts, as summarised below:

- The height difference has an inconsequential shadowing impact at mid-winter:
 - *Regarding existing surrounding development:* the shadow drawings submitted with the DA/RtS demonstrate that the proposed breach will not result in non-compliances with ADG criteria relating to overshadowing of adjoining residential development.
 - *Regarding potential future surrounding development:* BVN have prepared analysis (included within the RtS package), which demonstrates that the proposal will not compromise the development potential for a residential use on surrounding blocks. The analysis shows that with careful design and siting, these blocks will be able to demonstrate compliance with the NSW ADG, should they ever be redeveloped for residential purposes in the future.
 - *Regarding the internal through site link:* analysis submitted as part of the DA/RtS package demonstrates that the breach will not result in consequential additional overshadowing of the through site link (which sits directly to the north of Tower 3).
 - *Regarding MacCabe Park:* the proposal does not result in any additional shadowing to MacCabe Park at midwinter.

- No other amenity impacts (privacy, wind, CPTED, views or outlook) will arise from the additional height proposed.
- Having regard to the desired future character of the locality, the proposal represents an appropriate tower arrangement and follows the form set by the surrounding buildings and the LEP controls.
- Visual impact analysis has been undertaken from key public domain vantage points, including Flagstaff Hill, MacCabe Park and Crown Street. The results of this analysis indicate that the proposal will not generate any significant negative impacts and can be supported on visual impact grounds.
- View sharing analysis has been undertaken from key affected private domain vantage points. The results of this analysis indicates that the proposal, inclusive of LEP building height variation, represents a reasonable view sharing outcome having regard to the relevant LEC Planning Principles.

6.2.3. The burden placed on the community (by requiring strict compliance with the development standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development (cf Botany Bay City Council v Saab Corp [2011] NSWCA 308 at [15]).

As discussed above, the environmental impacts resulting from the breach are minimal and inconsequential. Requiring strict compliance with the development standard would result in an inferior design outcome for the project.

6.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and

...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. The following environmental planning grounds are considered sufficient for Council to support the minor contravention of the height of buildings development standard:

Shadow

As discussed above, the development will not result in any consequential solar impacts to existing surrounding development, potential future surrounding development, the internal through site link or MacCabe Park.

Visual Privacy

The area of additional breach (which is located on the eastern edges of Towers 2 and 3) will not result in visual privacy impacts. Appropriate separation distances are maintained between these towers and buildings on adjoining sites – in accordance with both the ADG and Council’s LEP controls.

Streetscape and Skyline

The area of breach (when considered as part of a whole of site massing strategy) is considered to provide a positive streetscape outcome. Towers 2 and 3 are deliberately planned to create a stepped arrangement of

building height on Burelli Street (with consistent podium expression), which results in zero additional overshadowing to MacCabe Park at midwinter. This arrangement creates a better skyline for Wollongong.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height of building non-compliance in this instance.

6.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 4.6(4)(A)(I)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

6.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in Table 1 above. The proposal is also consistent with the land use objectives that apply to the site under WLEP 2009. The site is located within the B3 Commercial Core zone. The proposed development is consistent with the relevant land use zone objectives as outlined in Table 2 below.

Table 2 – Assessment of compliance with land use zone objectives

Objective	Assessment
<ul style="list-style-type: none"> To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community. 	<p>The proposal will provide a wide variety of land uses (including retail, business, office and entertainment), which meet the desired future character of Wollongong CBD, together with the needs of the community.</p> <p>The land uses will stimulate the local and regional economies, at both day and night, and provide an impetus for urban renewal in the city centre – which will attract both locals and visitors to the CBD.</p>
<ul style="list-style-type: none"> To encourage appropriate employment opportunities in accessible locations. 	<p>The proposal includes a significant quantum (41%) of non-residential floor space, which is estimated to provide approximately 872 construction jobs and 1,271 operational jobs, while contributing approximately \$237.8 million in direct / indirect gross value add to NSW economy on an annual ongoing basis.</p> <p>This employment generating floor space is well located, proximate to transport infrastructure, and will build on Wollongong Council's vision for a vibrant CBD.</p>

Objective	Assessment
<ul style="list-style-type: none"> To maximise public transport patronage and encourage walking and cycling. 	<p>The project offers a unique urban renewal opportunity and is seeking to achieve a real change in the way people engage with Wollongong CBD in the years to come.</p> <p>In accordance with best practice, and to manage future traffic impacts in the CBD, the project is seeking to minimise its parking count in concert with various green travel initiatives.</p> <p>The proposal will include a vital pedestrian link/connection between the train station and town centre; while also encouraging active transport through the provision of high-quality end of trip facilities, together with other green travel initiatives.</p>
<ul style="list-style-type: none"> To strengthen the role of the Wollongong city centre as the regional business, retail and cultural centre of the Illawarra region. 	<p>The proposal will deliver a significant quantum of high-quality business, retail and cultural uses as part of a whole-of-block development, which will revitalise Wollongong City Centre, strengthening its regional role in the Illawarra.</p> <p>The operation of the proposed development also has the potential to deliver approximately \$237.8 million in direct / indirect annual gross value add to the NSW economy on an ongoing annualised basis.</p>
<ul style="list-style-type: none"> To provide for high density residential development within a mixed-use development if it— <ul style="list-style-type: none"> (a) is in a location that is accessible to public transport, employment, retail, commercial and service facilities, and (b) contributes to the vitality of the Wollongong city centre 	<p>The proposal includes high quality residential dwellings in a convenient, accessible and naturally beautiful location. The site has access to public transport and other services/facilities.</p> <p>The development will greatly contribute to the urban regeneration and revitalisation of Wollongong and provide a new meeting place and destination for existing and future residents of the locality.</p> <p>The proposal is of high-quality design and will positively contribute to the streetscape and reinvigorate an underutilised and declining area of Wollongong CBD. The proposed development has been designed to be consistent with the surrounding built environment and vision for a vibrant high-density development.</p>

The above table demonstrates the proposed development will be in the public interest notwithstanding the proposed variation to the building height, as it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

6.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 4.6(4)(B) AND CLAUSE 4.6(5)

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18–003 ‘Variations to development standards’, dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have given concurrence as the matter will be determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the height of building will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the height of building and the land use zone objectives despite the technical non-compliance.

The proposed arrangement of towers yields a superior built form outcome, which mitigates any consequential environmental impacts. Were strict compliance required, the desired tower arrangement would be hindered.

There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

- **Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.

7. CONCLUSION

For the reasons set out in this written request, strict compliance with the height of building contained within clause 4.3 of WLEP 2009 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the height of building to the extent proposed for the reasons detailed within this submission and as summarised below:

- The proposal is consistent with the objectives of the building height standard.
- The proposal is under the maximum FSR control and achieves an appropriate density and overall tower massing strategy for the site.
- There are site-specific circumstances which have required a different (non-compliant) building height approach for the site. Primarily, the variation results from the redistribution of massing across the site as a result of these considerations.
- At most parts of the site, the buildings are significantly under the allowable height limit. For example, Towers 1 and 2 could have both been positioned within the 120m building zone and built to this height, however this was deemed inappropriate. Primarily, the reason this was not explored was because the massing strategy sought to pull towers to the southern portion of the site, away from the sensitive heritage character of Crown Street. This strategy also had the benefit of creating a high amenity public through site link and reducing the visual impact of the tower forms from key public locations (as they were positioned at the 'low point').
- The form of Towers 2 and 3 are deliberately planned to create a stepped arrangement of building height on Burelli Street (with consistent podium expression, resulting in a cohesive built form response.
- The proposal will not have an unreasonable shadow impact on the public domain. Importantly, the height arrangement will provide a better urban design and visual impact outcomes.
- The variation to the development standard is supportable by environmental planning grounds including the limited environmental impact resulting from the breach to the standard, and benefits to the proposal resulting from the breach.
- Maintaining strict compliance with the development standard is not considered to be in the public interest.

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the height of building should be applied.

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