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CLAUSE 4.6 VARIATION REQUEST FOR BUILDING SEPARATION

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 building separation controls prescribed under clause 8.6 of Wollongong Local Environmental Plan 2009 (WLEP 2009). The variation is 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 LEP contains various setback controls, which are based on building typology (i.e. residential and non-residential) and height (street frontage, above 24m and above 45m). The building arrangement is non-compliant in various locations, which is summarised illustratively in the BVN drawing appended to this report.

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 separation standard.
- The non-compliance has inconsequential environmental impacts and will not set a precedent.
- The variation enables a development outcome that is strongly aligned with Council's strategic direction and vision for the site. The WLEP controls anticipate a continuous, zero-setback, 24m high street wall wrapping around the entire block. This would not yield a positive urban design response, especially in relation to the Crown Street interface (which is lower scaled, reflecting its historical high street nature).
- The variation allows for various physical and visual connections through/across the site, which provides a direct benefit from a DDA perspective – as the connections rationalise the warping site topography. The connection also satisfies a key 'desire line' between Crown Street, Wollongong Train Station and the City Centre.
- The taller tower elements are separated in excess of both LEP and ADG controls. This was a deliberate move to create appropriate spatial separation between these taller building elements as viewed in the city skyline and surrounding context.
- The variation allows for greater accentuation of architectural diversity across the street block.
- The WLEP controls are inconsistent with the NSW ADG, which is a more contemporary, State-wide document which guides apartment development – and is more relevant to a 'whole of block' development. The ADG assessment prepared as part of this application demonstrates that the proposal meets the relevant objectives/criteria of ADG Part 3F (Visual Privacy).
- There are site-specific circumstances which have required a different (non-compliant) building separation approach for the site. Primarily, the variation results from the redistribution of massing across the site as a result of these considerations.

- The proposed building separations enable a tower massing strategy that successfully mitigates environmental impacts – including visual appearance, visual privacy and solar access.
- Providing two ‘steps’ in the towers (i.e. podium setback and further setback above 45m), as anticipated by the WLEP controls, would result in a ‘wedding cake’ or ‘ziggurat’ building appearance, which does not yield a positive architectural response to the site conditions, and would be inconsistent with the design excellence provisions of the Wollongong LEP (cl 7.18).
- The internal layouts of buildings have been designed to ensure there are no resultant privacy impacts where separation distances are not met. The introduction of privacy screens in discrete locations does not impact the architectural composition of the buildings; and
- All buildings will comply with the relevant ADG solar access and cross ventilation 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.

2. SITE CONTEXT

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 Statement of Environmental Effects prepared by Urbis. The proposal is also detailed within the architectural, engineering and landscape drawings that form part of the DA.

The proposal comprises 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 SEPARATION STANDARD

This section of the report identifies the development standard which 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 8.6 of the WLEP 2009 provides building separation development standards, as below:

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

4.2. PROPOSED VARIATION TO BUILDING SEPARATION

The proposal is non-compliant with the building separation controls in the following ways:

- Regarding Subclause (2)(a) – the three residential buildings, and the pool/gym building contain breaks in the street wall. This is a deliberate design move to break up the built massing and provide a development that is permeable by inclusion of physical and visual connections through/across the site. This is non-compliant by virtue of providing separation between buildings, when the LEP control envisages zero separation.
- The separation distances for the residential towers – i.e. above the street frontage height are based on the NSW Apartment Design Guide separation requirements. A comparison between the two sets of building separation requirements is provided below:

NSW Apartment Design Guide (ADG)	Wollongong LEP 2009
<p>12m (first 4 storeys):</p> <ul style="list-style-type: none"> 12m between habitable rooms/balconies 9m between habitable and non-habitable rooms 6m between non-habitable rooms <p>25m (5-8 storeys):</p> <ul style="list-style-type: none"> 18m between habitable rooms/balconies 12m between habitable and non-habitable rooms 9m between non-habitable rooms <p>Above 25m (9 storeys and above):</p> <ul style="list-style-type: none"> 24m between habitable rooms/balconies 18m between habitable and non-habitable rooms 12m between non-habitable rooms 	<ul style="list-style-type: none"> 20 metres from any habitable part of a dwelling contained in any other building, and 16 metres from any other part of any other building.

- Based on the above table, it is clear that the separation controls are misaligned. While technically the WLEP contains more relaxed controls for separation distances above 25m/9 storeys, the 'blanket' requirement to have 16m and 20m building separations from ground level is incompatible with the ADG. The project has adopted ADG controls as a more contemporary guide to building separation and tower arrangement on a large development site. The proposal is generally compliant with the ADG. Only nine apartments across the whole development are non-compliant with the ADG building separation criteria. These apartments have been appropriately treated with privacy screens and other mitigation measures (such as acoustic treatments) to ensure these adjacencies are appropriately managed.
- Refer to drawing below for graphical representation of the non-compliance:

Figure 2 – Building Separation Analysis



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 building separation prescribed for the site in clause 8.6 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 building separation 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 building separation, in accordance with clause 8.6 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 building separation prescribed by clause 8.6 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 are 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 building separation as specified in clause 8.6 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 8.6 objectives

Objectives	Assessment
(1) The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.	<p>Regarding visual appearance, the separation distances proposed (while non-compliant), contribute to a better reading of the building facades, expressing the diversity of architecture proposed across the street block.</p> <p>Internal layouts of buildings have been designed to ensure there are no resultant privacy impacts where separation distances are not met. Where necessary, angled privacy screens are proposed to be installed to ensure residential amenity is maintained. There are various precedents of privacy screens that are complimentary to the overall façade composition of buildings. This is discussed in more detail in Section 6.3 below.</p> <p>Regarding solar access, it has been confirmed that the apartment buildings (on a 'building by building' basis) will comply with the relevant ADG criteria. Sufficient solar access is also provided to the communal and public open spaces in the development. This is discussed in more detail in Section 6.3 below.</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 separation controls (summarised above in Table 1) are better achieved by the proposed development compared with a potentially compliant scheme because:

- The proposed setbacks (using ADG for guidance) better respond to the character of the precinct and provides a superior design outcome because:
 - The WLEP controls anticipate a continuous, zero-setback, 24m high street wall wrapping around the entire block. This would not yield a positive urban design response, especially in relation to the Crown Street interface (which is lower scaled, reflecting its historical high street nature).
 - A continuous street block (described above) would also hinder the permeability afforded by the various entries/exits to the internal through site link. These links also provide a benefit from a DDA perspective, as they assist in rationalising the warping ground levels surrounding the site. The link also assists in creating the 'desire line' from the Crown/Kiera St intersection and Wollongong Train Station.
 - Providing clear and continuous separation between the buildings assists in breaking up the built massing, accentuating the diversity of architectural expression across the site.

- Providing two ‘steps’ in the towers (i.e. podium setback and further setback above 45m), as anticipated by the WLEP controls, would result in a ‘wedding cake/ziggurat’ building appearance, which does not yield a positive architectural response to the site conditions, and would be inconsistent with the design excellence provisions of the Wollongong LEP (cl 7.18).
- The design team have taken cues from the NSW ADG in determining appropriate separation distances between for residential buildings. This approach was supported (in-principle) by the Wollongong Design Review Panel, who have reviewed the proposal during the pre and post lodgement phases. The ADG assessment prepared as part of this application demonstrates that the proposal meets the relevant objectives/criteria of ADG Part 3F (Visual Privacy).

6.2.3. The burden placed on the community (by requiring strict compliance with the FSR 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 building separation development standard:

Residential Solar Access and Cross Ventilation

It has been confirmed that the apartment buildings (on a ‘building by building’ basis) will comply with the relevant ADG criteria, including solar access and cross ventilation. The non-compliance to the building separation controls do not hinder the development’s ability to achieve these criteria. Sufficient solar access is also provided to the communal and public open spaces in the development, which will enjoy high levels of amenity through landscape planting and access to district views.

Visual Privacy

The building separations proposed are generally consistent with the NSW ADG. BVN has undertaken a comprehensive ADG assessment as part of this application, including against Objective 3F. The assessment concludes that appropriate outcomes are achieved across the site, with angled privacy screens to be installed in certain locations (where separation distances are not strictly achieved) to ensure residential amenity is maintained.

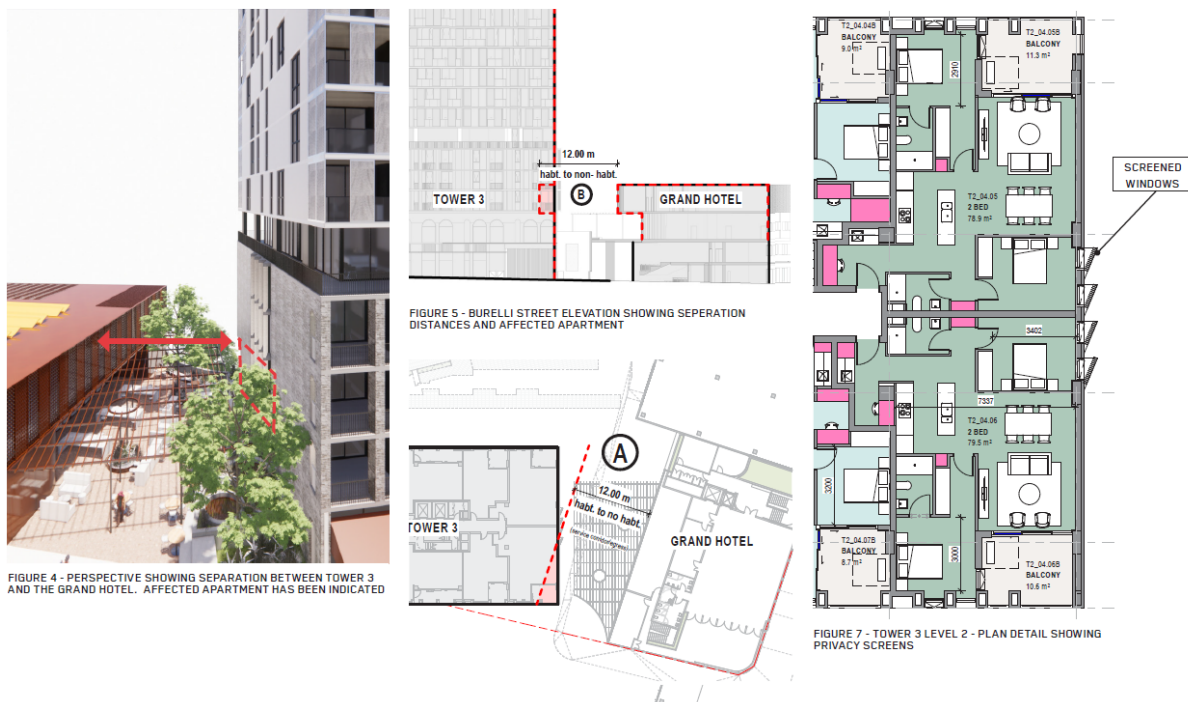
A discussion of key interface locations is discussed below:

1. Separation between Tower 3 and The Grand Hotel

At the lower levels of Tower 3, five apartments have an interface with the Grand Hotel. In this location, a 9.23m setback is provided. The design has been carefully planned and sited to manage any potential amenity impacts between the two uses.

- This is a side elevation that does not contain living rooms or balconies. These face in the opposite direction, away from The Grand Hotel.
- The elevation is predominantly a blank wall with limited opportunities for overlooking.
- While there are some bedroom windows located on this side of the building, these have been screened and re-directed away from any noise source.
- The apartments have been treated with acoustic glazing (based on the advice of the project acoustic engineer) and will comply with the relevant noise policy criteria.
- The Grand Hotel beer garden includes a pergola structure to manage acoustic impacts.
- Generous landscaping is provided between the buildings to assist with visual and acoustic privacy outcomes (noting that the previously proposed through site link access in this location has been removed); and
- The terrace area of the exhibition space has been designed to screen sound and visibility away from the residential tower.

Figure 3 – Tower 3 Separation



Source: BVN

2. Separation between Tower 1 and Tower 2

Another key interface is the distance between one apartment within the Tower 2 podium and Tower 1. For this apartment, screened windows have been provided for the bedroom, living room and balcony (on the western façade). For continuity of architectural expression, the screens have been continued along the whole façade.

Figure 4 – Tower 1 and Tower 2 Separation

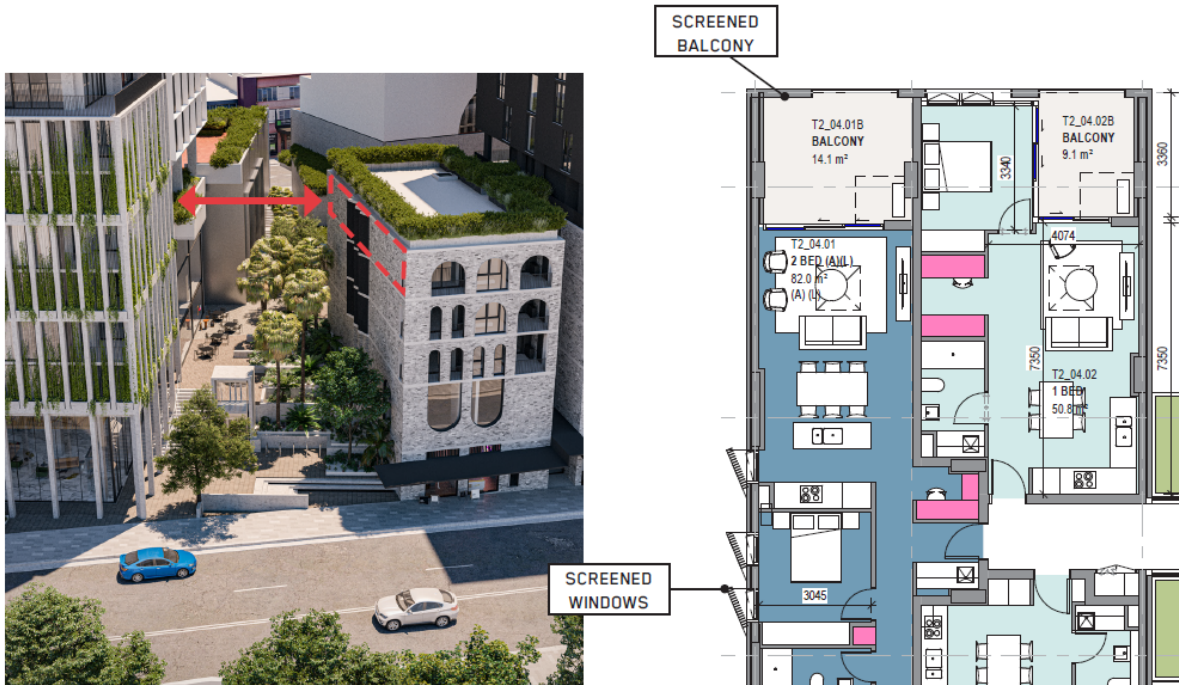


FIGURE 1 - PERSPECTIVE SHOWING SEPARATION BETWEEN TOWER 1 AND 2. THE AFFECTED APARTMENT HAS BEEN INDICATED

NOTE: IMAGE FROM PREVIOUS DA SUBMISSION HAS BEEN USED

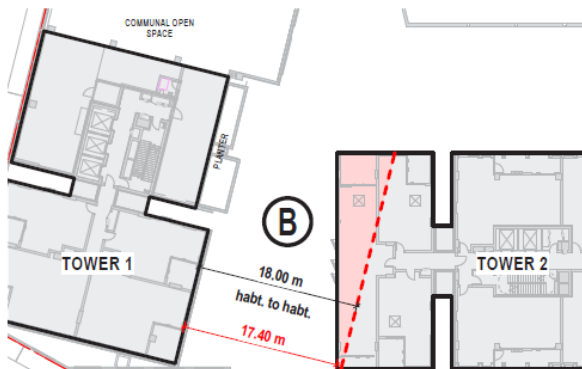


FIGURE 3 - TOWER 1 AND TOWER 2 BUILDING SEPERATION DIAGRAM

Source: BVN



FIGURE 2 - TOWER 2 TYPICAL PLAN DETAIL SHOWING SCREENED WINDOWS

3. Separation between Tower 2 and Tower 3

There is a non-compliance (LEP and ADG) in the separation distance between the Tower 2 and Tower 3 podium form. Only three apartments are affected in this location.

As shown in the diagram below (which is produced in A3 within the BVN Design package), the potential for visual privacy (overlooking) impacts is negated through the use of privacy screens in selected locations. As with Tower 2, these privacy screens have been continued down the façade to ensure continuity of architectural expression.

Figure 5 – Tower 2 and Tower 3 Separation



FIGURE 4 - PERSPECTIVE SHOWING BUILDING SEPARATION ALONG BURELLI STREET BETWEEN TOWER 2 AND 3 PODIUMS. AFFECTED APARTMENTS HAVE BEEN INDICATED

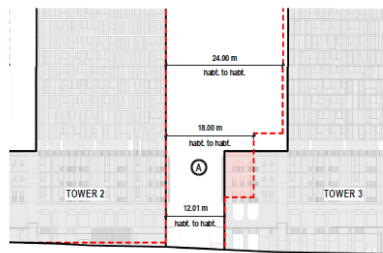


FIGURE 6 - BURELLI STREET ELEVATION SHOWING SEPARATION DISTANCES AND AFFECTED APARTMENTS

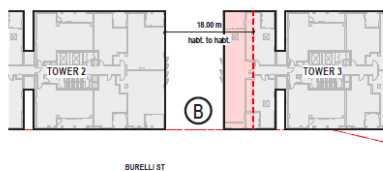


FIGURE 7 - SEPARATION DISTANCES BETWEEN TOWERS 2 AND 3 PODIUMS

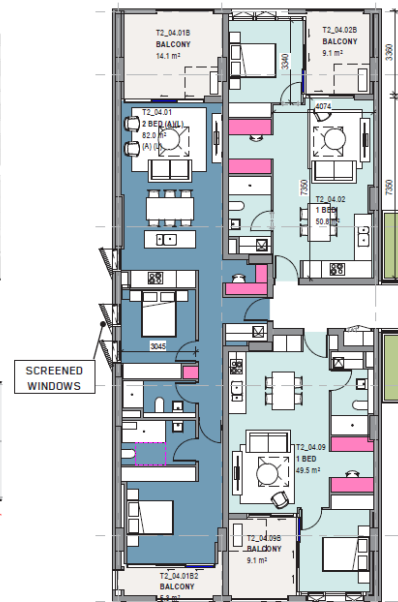
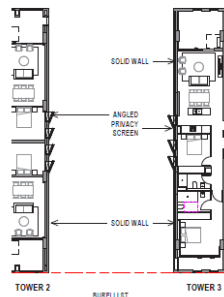
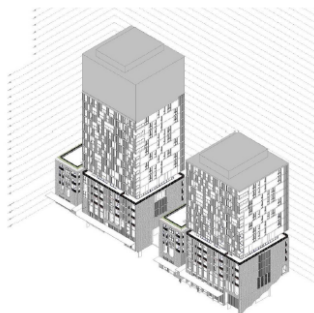


FIGURE 9 - DETAIL PLAN OF TOWER 2 SHOWING PRIVACY SCREENS.



Source: BVN

Streetscape and Visual Appearance

As discussed above, the physical and visual breaks in the buildings at ground level/street wall height, while non-compliant with the LEP, provide a superior ground plane and DDA outcome through delivering important mid-block connections in the CBD, while also ensuring buildings maintain different expressions across the site. The 'stepped' tower formation envisaged under an LEP compliant scenario is not supported on design grounds. Council have indicated support for the consistent podium height between the towers, which provides a consistent street wall datum.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed building separation 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. 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> <p>In coordination with Council and TfNSW, the Applicant has provided a generous public realm that will improve pedestrian amenity through increased footpath widths and allowance for a new bus stop on Crown Street. Numerous bicycle spaces are provided in the public realm to encourage cycling.</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 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.</p> <p>The proposal is of high-quality design and will positively contribute to the streetscape and reinvigorate an underutilised, tired 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 separation controls 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 building separation 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 building separation 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 stymied.

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 building separation contained within clause 8.6 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 building separation 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 separation standard.
- The non-compliance has inconsequential environmental impacts and will not set a precedent.
- The variation enables a development outcome that is strongly aligned with Council's strategic direction and vision for the site. The WLEP controls anticipate a continuous, zero-setback, 24m high street wall wrapping around the entire block. This would not yield a positive urban design response, especially in relation to the Crown Street interface (which is lower scaled, reflecting its historical high street nature).
- The variation allows for various physical and visual connections through/across the site, which provides a direct benefit from a DDA perspective – as the connections rationalise the warping site topography. The connection also satisfies a key 'desire line' between Crown Street and the Wollongong Train Station.
- The taller tower elements are separated in excess of both LEP and ADG controls. This was a deliberate move to create appropriate spatial separation between these taller building elements as viewed in the city skyline and surrounding context.
- The variation allows for greater accentuation of architectural diversity across the street block.
- The WLEP controls are inconsistent with the NSW ADG, which is a more contemporary, State-wide document which guides apartment development – and is more relevant to a 'whole of block' development. The ADG assessment prepared as part of this application demonstrates that the proposal meets the relevant objectives/criteria of ADG Part 3F (Visual Privacy).
- There are site-specific circumstances which have required a different (non-compliant) building separation approach for the site. Primarily, the variation results from the redistribution of massing across the site as a result of these considerations.
- The proposed setbacks enable a tower massing strategy that successfully mitigates environmental impacts – including visual appearance, visual privacy and solar access.
- Providing two 'steps' in the towers (i.e. podium setback and further setback above 45m), as anticipated by the WLEP controls, would result in a 'wedding cake' or 'ziggurat' building appearance, which does not yield a positive architectural response to the site conditions, and would be inconsistent with the design excellence provisions of the Wollongong LEP (cl 7.18).
- The internal layouts of buildings have been designed to ensure there are no resultant privacy impacts where separation distances are not met. The introduction of privacy screens in discrete locations does not impact the architectural composition of the buildings.
- All buildings will comply with the relevant ADG solar access and cross ventilation 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 LEP Planning Principles.
- 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 building separation should be applied.

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