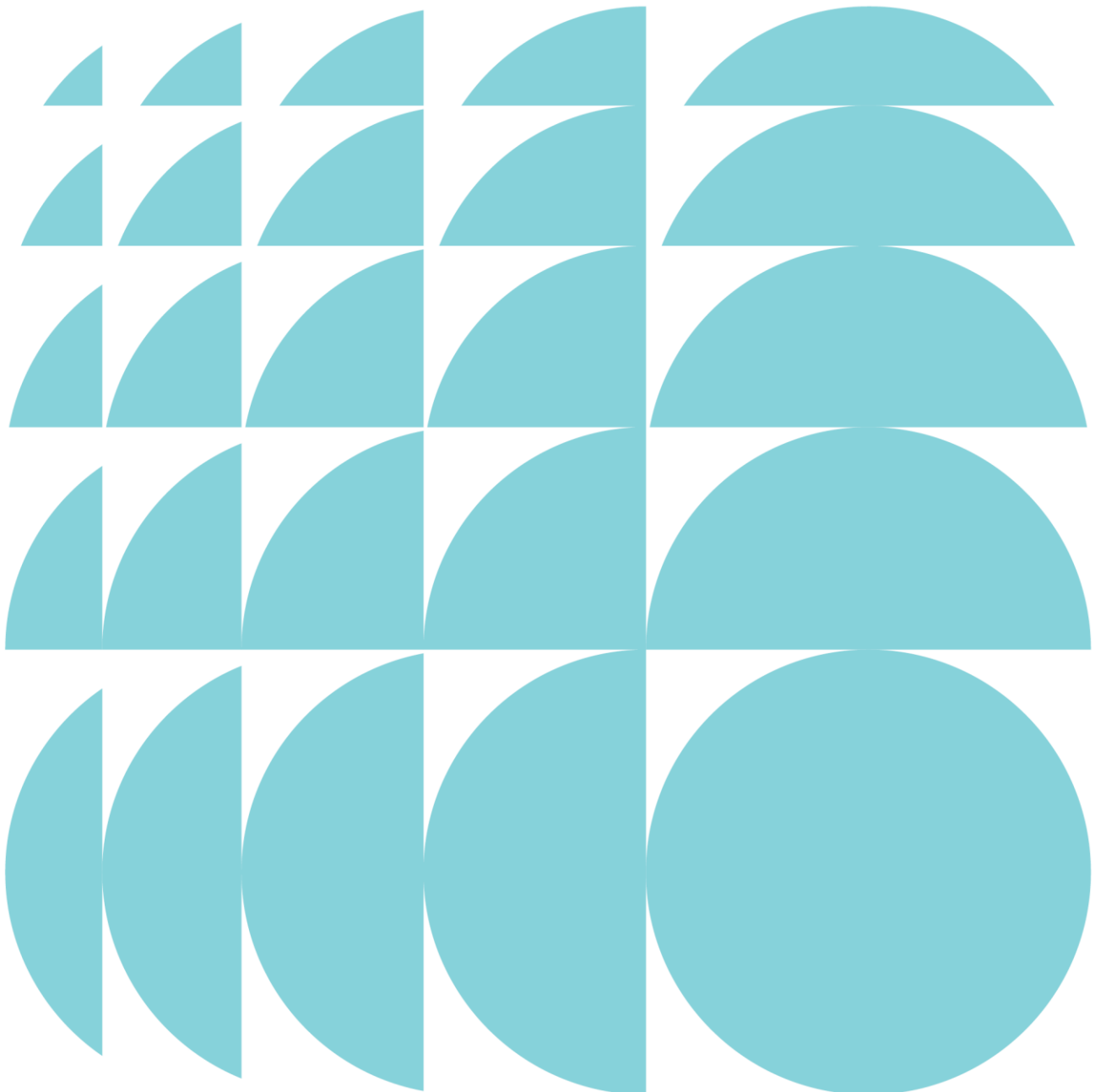


Clause 4.6 Variation request to development standard – building separation

Stage 2 Development Application
Liverpool Civic Place – Phase A
52 Scott Street, Liverpool

Submitted to Liverpool City Council
On behalf of Built Development Group

30 September 2020 | 2200178



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1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of Built Development Group (Built). It is submitted to Liverpool City Council (Council) in support of a detailed (Stage 2) Development Application (DA) comprising two buildings forming Phase A of the mixed-use precinct known as Liverpool Civic Place at 52 Scott Street and 306-310 Macquarie Street, Liverpool (the site).

Clause 4.6 of the *Liverpool Local Environmental Plan 2008* (Liverpool LEP 2008) enables a consent authority to grant consent for development even though the development contravenes a development standard. Clauses 4.6(3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard. These three matters are detailed below:

- that the applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under *State Environmental Planning Policy 1 – Development Standards* (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe).

While these cases referred to the former SEPP 1, the analysis remains relevant to the application of clause 4.6(3)(a). Further guidance on clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

In accordance with the above requirements, this Clause 4.6 variation request:

- identifies the development standard to be varied (**Section 2.0**);
- identifies the variation sought (**Section 3.0**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.0**);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 5.0**);
- demonstrates that the proposed variation is in the public interest (**Section 6.0**); and
- provides an assessment of the matters the secretary is required to consider before providing concurrence (**Section 7.0**).

This clause 4.6 variation request relates to the development standards within Clause 7.4 'Building separation in Liverpool City Centre' of the Liverpool LEP 2008, and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated September 2020. This clause 4.6 variation request

demonstrates that compliance with the building separation development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify variation to the standard. Therefore, the DA may be approved with the variations proposed in accordance with the flexibility allowed under Clause 4.6 of the Liverpool LEP 2008.

1.1 Concept DA Approval (DA-585/2019)

Importantly, it is noted that in approving the Concept Proposal (DA-585/2019) for the site, the Sydney Western City Planning Panel approved variations to the same building separation development standards in the same locations, proposed with this variation request, but of a greater magnitude. On the basis that the consent authority has recently determined that variations greater than those proposed with this request (in the same locations) satisfy the requirement of Clause 4.6 of the Liverpool LEP 2008, it is considered that there are sufficient environmental planning grounds to support the proposed variations. **Figure 1** below illustrates the variations approved by the Panel on 31 August 2020. The variations the subject of this request are of a lesser magnitude given the proposed buildings do not occupy the full extent of the approved building envelopes.

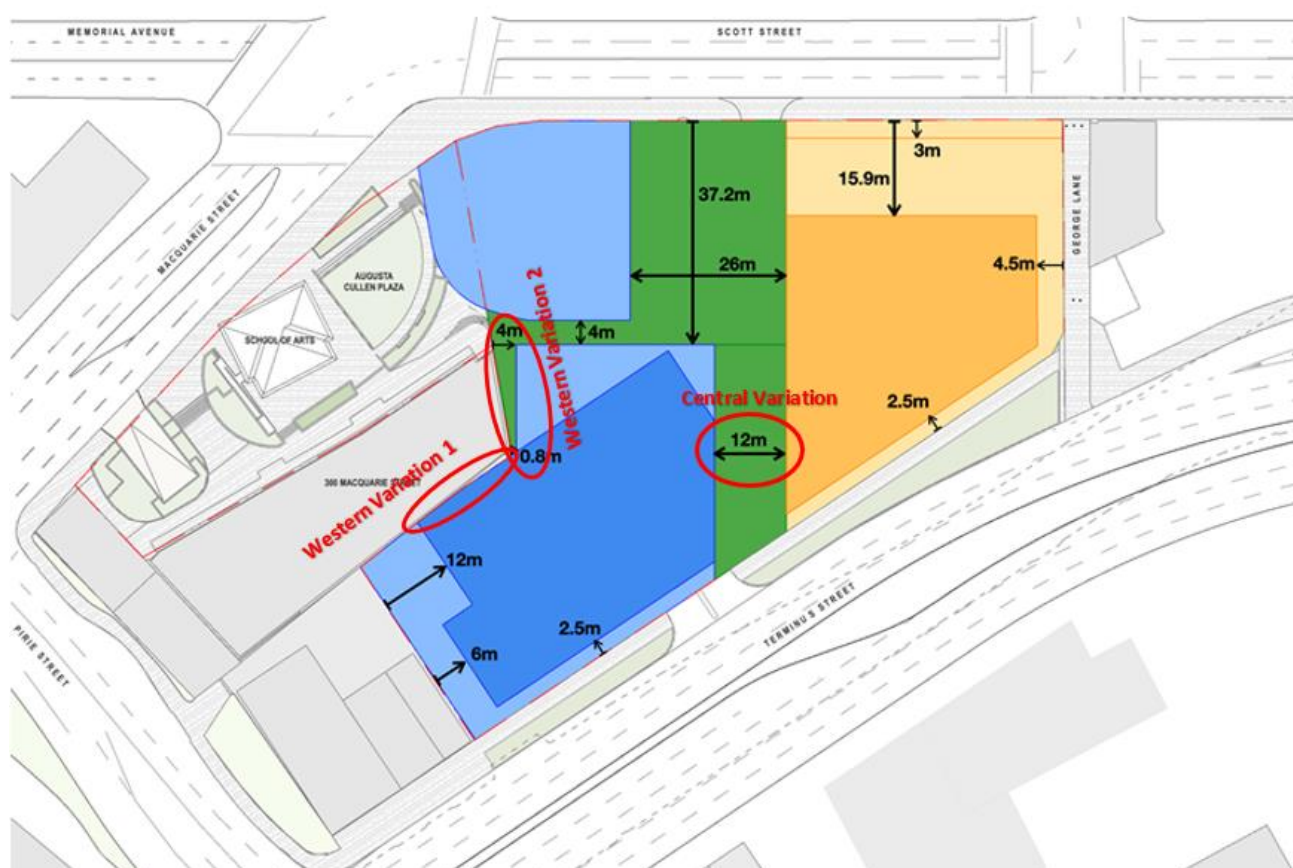


Figure 1: Approved building separation variations under Concept DA Approval (DA-585/2019)

Note: This Clause 4.6 variation request relates to western variations 1 and 2 only.

Source: FJMT

2.0 Development Standard to be Varied

This Clause 4.6 Variation Request seeks to justify contravention of the development standards set out in Clause 7.4(2)(d) and Clause 7.4(2)(e) of the Liverpool LEP 2008. Clause 7.4 states as follows:

7.4 Building separation in Liverpool city centre

(1) *The objective of this clause is to ensure minimum sufficient separation of buildings for reasons of visual appearance, privacy and solar access.*

(2) *Development consent must not be granted to development for the purposes of a building on land in Liverpool city centre unless the separation distance from neighbouring buildings and between separate towers, or other separate raised parts, of the same building is at least—*

(a) 9 metres for parts of buildings between 12 metres and 25 metres above ground level (finished) on land in Zone R4 High Density Residential, and

(b) 12 metres for parts of buildings between 25 metres and 35 metres above ground level (finished) on land in Zone R4 High Density Residential, and

(c) 18 metres for parts of buildings above 35 metres on land in Zone R4 High Density Residential, and

(d) 12 metres for parts of buildings between 25 metres and 45 metres above ground level (finished) on land in Zone B3 Commercial Core or B4 Mixed Use, and

(e) 28 metres for parts of buildings 45 metres or more above ground level (finished) on land in Zone B3 Commercial Core or B4 Mixed Use.

(our emphasis bold)

The site is within a B4 Mixed Use zone, as such it is land to which Clause 7.4(2)(d) applies.

3.0 Nature of the variations sought

For clarity, the building separation development standards prescribed under clause 7.4 only apply to existing buildings or buildings on the same site. In this regard, the two (2) variations specified below are the variations to which this Clause 4.6 variation request relates. They are herein referred to as western variation 1 and western variation 2. These variations are identified in red circles in **Figure 2** below.

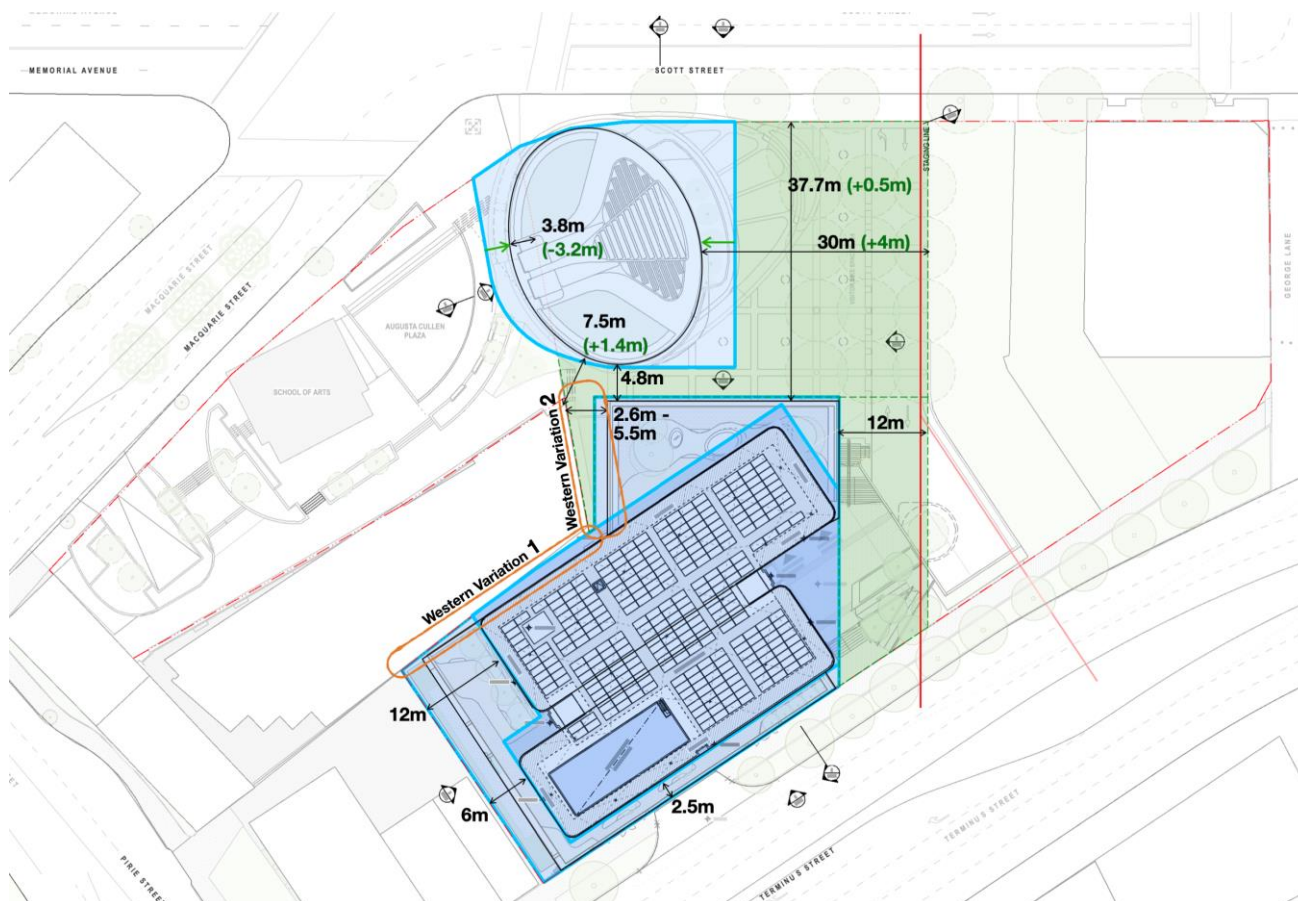


Figure 2: Visual representation of proposed building separation variations

Source: FJMT (with additions)

3.1 Western variation 1 (adjoining site)

As illustrated in **Figure 2**, a varied building separation of between nil-2.6m is proposed from the proposed south-western building (civic building) to the rear of the existing mixed-use building at 300 Macquarie Street, in contravention of Clause 7.4(2)(d), which requires a minimum separation distance of 12m for parts of buildings between 25m and 45m in height. The contravention occurs as the proposed building is greater than 12 metres in height (RL 56.7 for the podium and RL 80.75 for the tower) and 300 Macquarie Street is greater than 25 metres in height but less than 45 metres in height. The separation distance has been set by the design of the mixed use development at 300 Macquarie Street, as it presents a rear party wall to the site boundary (refer to **Figure 2**) and all apartments and tenancies are oriented to the north west away from the site (refer to **Figure 3**).

3.2 Western variation 2 (adjoining site)

As illustrated in the proposed drawings in Appendix A of the SEE and in **Figure 2**, a varied building separation of between 2.6m – 5.5m is proposed between the northern section of the podium of the south-western building and the existing building at 300 Macquarie Street, in contravention of Clause 7.4(2)(d), which requires a minimum separation distance of 12m for parts of buildings between 25m and 45m height. The contravention occurs as the podium is proposed at a height between 25m and 45m in height (RL 55.5m) and 300 Macquarie Street is greater than 25 metres in height but less than 45 metres in height. Notably, the eastern edge of 300 Macquarie Street is a blank wall and therefore no apartments or tenancies are oriented toward the site.



Figure 3: Rear elevation (party wall) of the mixed use building located at 300 Macquarie Street



Figure 4: North western elevation of the mixed use building located at 300 Macquarie Street

4.0 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five ways in which it could be shown that a variation to a development standard was unreasonable or unnecessary. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis may be of assistance in applying clause 4.6 given that subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]; *Initial Action* at [16]).

The five methods outlined in *Wehbe* were:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
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 Method**).
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 Method**).

In this instance, the **First Method** is of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary.

4.1 The objectives of the development standard are achieved notwithstanding the non-compliance (first method)

The objective of the development standards contained in Clause 7.4(2)(d) and Clause 7.4(2)(e) of the Liverpool LEP 2008 is:

“to ensure minimum sufficient separation of buildings for reasons of visual appearance, privacy and solar access”

The single objective places an emphasis on visual appearance, privacy and solar access. These components are assessed in relation to the proposed development below. This is also reinforced within Section 4.0 of the SEE and the Design Report in Appendix D of the SEE.

4.1.1 Visual appearance

The site is in an advantageous central location for site access and activation, site division and the positioning of a gateway tower marker development. The southern end of the Liverpool CBD largely consists of dated low scale buildings and will significantly benefit from urban revitalisation. The massing of the proposed development (including the proposed building separation variations) has been designed to facilitate highly visible, transparent public facilities in this location as discussed below.

As identified in **Section 3.0**, two building separation variations are proposed at the interface between the south-western building and the existing mixed use building to the immediate west of the site at 300 Macquarie Street. This

is a recently constructed building, which was completed in late 2016. The proposed development includes a building with a reduced setback to the rear of the mixed-use building, thereby almost abutting its rear party wall up to its maximum height of nine storeys (refer to **Figure 3** above). It also proposes a separation distance ranging from 2.6m – 5.5m to the immediate east of 300 Macquarie Street, toward the existing blank wall of this building.

The proposed reduced setback will ensure the orderly and economic development of the site and the whole block, allowing any future redevelopment of 300 Macquarie Street to occur with a primarily northern orientation, and also allows the south-western building to respond to this potential future scenario by primarily orientating its outlook in other directions. The 2.6m – 5.5m podium separation to the east of 300 Macquarie Street will also not impact on the economic development of the site, as 300 Macquarie Street is orientated in a north-west direction, away from the south-western building. As such, this will ensure the development of the block results in buildings which take full advantage of views to the north, south, east and west, whilst minimising unusable space between the rear of abutting buildings and blank walls, providing the best city building outcome for the block.

Furthermore, the podium height of the south-western building has been informed by the datum of the existing mixed-use building, as illustrated at **Figure 5**. This presents an appropriate visual appearance in the context of this building.

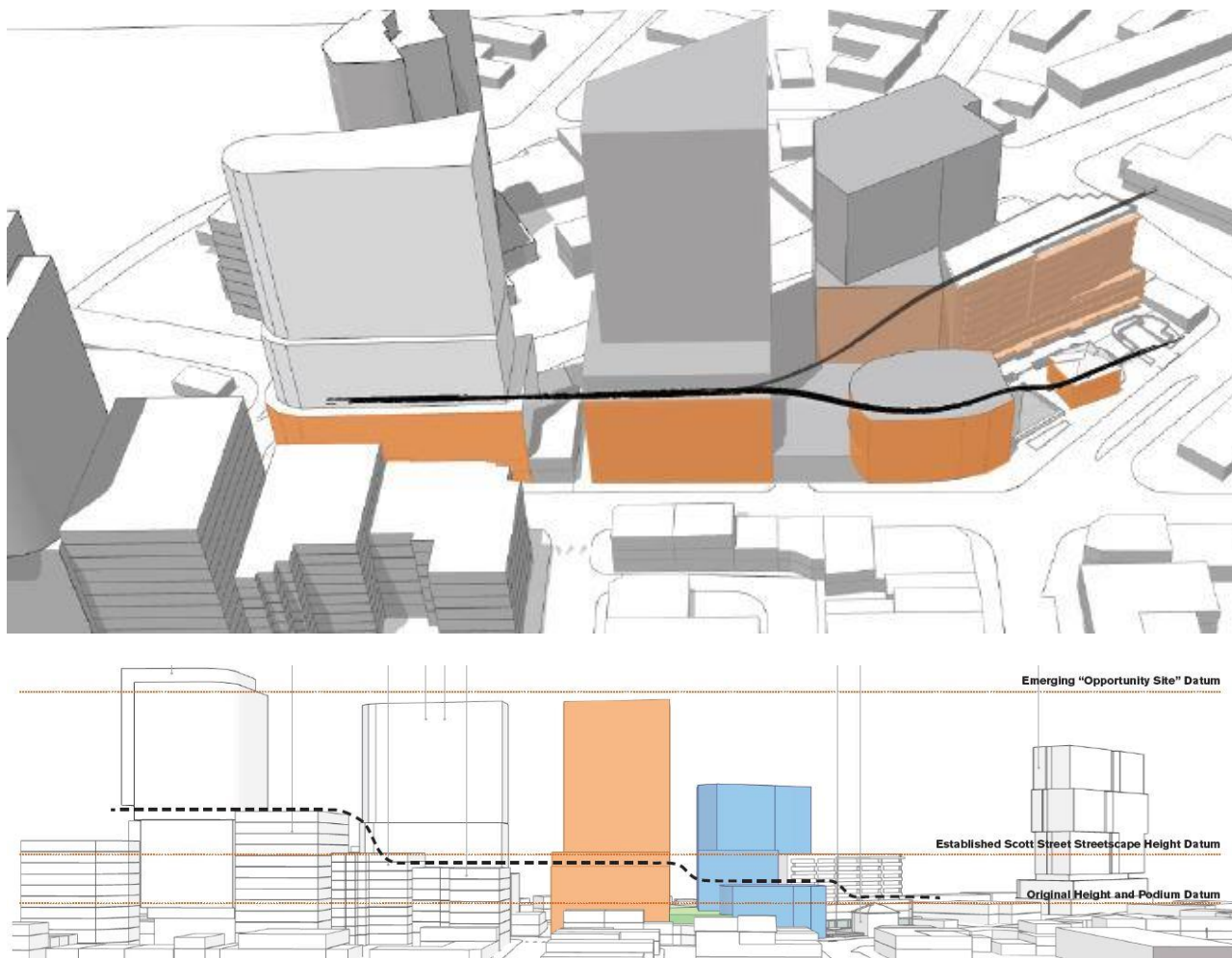


Figure 5: Scott Street frontage heights (including indicative future surrounding development)

Source: FJMT

4.1.2 Privacy

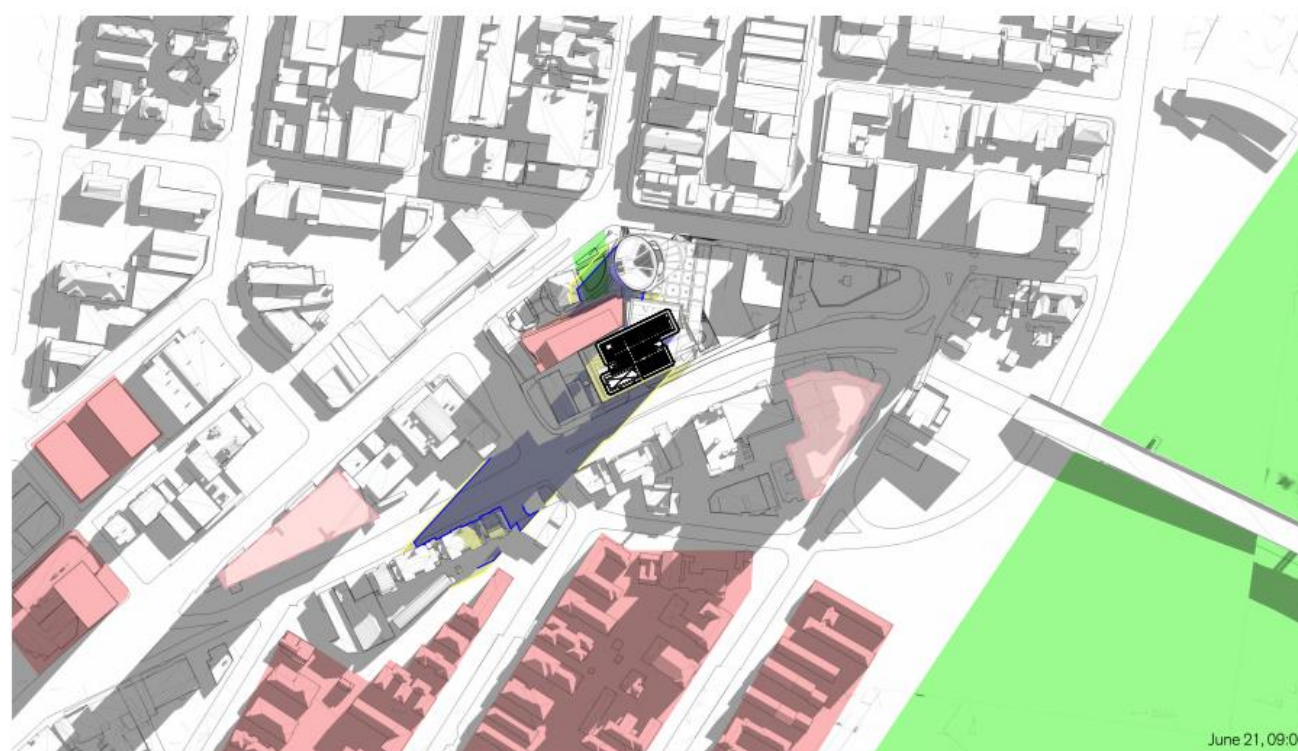
The components of the proposal which are proposed to exceed the building separation development standards will not result in adverse impacts on privacy, as discussed below.

As detailed in **Section 3.0**, western variation 1 involves the rear elevation of the building at 300 Macquarie Street presenting a blank party wall to the proposed south-western building (refer to **Figure 2**). Western variation 2 relates to the proposal interfacing with the eastern edge of 300 Macquarie Street. Notwithstanding, apartments and tenancies within this building are oriented to the north west (refer to **Figure 3**) and the building contains no rooftop uses. As such, the proposed development will have no impact on privacy to this building.

4.1.3 Solar access

The elements that are proposed to exceed the building separation development standard will not result in significant adverse impacts on solar access to the site or the surrounding development. In support of this, FJMT has prepared a detailed shadow study (included within the Design Report in Appendix D of the SEE). For absolute clarity, the shadow diagrams are based on the buildings contained within the proposed development during the winter solstice as illustrated at **Figure 5**. As such, this represents the worst case scenario.

With regard to the solar impact of the building separation variations to the mixed use building at 300 Macquarie Street, the proposed western variations are located to the immediate south and east of this building. As such, there is a no shadow impact to this building. In addition, the apartments within this building are provided with an unimpeded north-westerly aspect (refer to **Figure 3**), therefore they receive a high level of solar access.



June 21, 9am





June 21, noon



June 21, 3pm

Figure 6: Winter solstice shadow diagrams

Source: FJMT

4.1.4 Wind impacts

Whilst wind impacts are not specified within the objective of the building separation development standard, it is a relevant consideration when discussing the proximity of building envelopes and the impact on the surrounding pedestrian environment. In this regard, Windtech has prepared a Wind Impact Statement which is provided in Appendix Q of the SEE. In particular, Windtech has examined the likely effect of wind on the various trafficable outdoor areas within and surrounding the site.

The results of the wind analysis have confirmed that it is not expected that the wind conditions at the site will pose any safety risks to pedestrians in the area, and that wind conditions for the majority of trafficable outdoor locations within and around the development will be suitable for their intended uses. Some areas on terraces are recommended to include mitigation measures to improve conditions, however, all areas are expected to be generally suitable for the proposed uses.

4.1.5 Summary

The objectives of the development standard are achieved notwithstanding the non-compliance, given:

- The rear elevation of the building at 300 Macquarie Street presents a blank party wall, as such it is visually appropriate to conceal this from the public domain.
- The western variations will ensure the development of the block results in buildings which take full advantage of views to the north, south, east and west, whilst minimising unusable space between the rear of the abutting building at 300 Macquarie Street, as well as at the blank walls to the east. This provides the best city building outcome for the block.
- The podium of the south-western building has been informed by the datum of the existing mixed-use building.
- Apartments and tenancies within the building at 300 Macquarie Street are oriented to the north west and the building contains no rooftop uses, as such the variations will not generate any privacy impact to this building.
- The shadow cast by the proposed development allows the new public domain area to the east of the library to be provided with quality solar access throughout the day.
- The central through-site link receives over 2 hours of direct sunlight between 11am and 1pm on 21 June. Whilst some overshadowing is proposed this is appropriate within an urbanised and growing metropolitan centre.
- The nil separation to the 300 Macquarie Street is at the southern interface, as such there is a negligible impact on solar access to this building.
- Windtech concludes that the proposed development (including building variation separations) is capable of accommodating a development that can achieve suitable wind conditions for pedestrians in and around the site.

5.0 Clause 4.6(3)(b) There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the Liverpool LEP 2008 requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating:

That there are sufficient environmental planning grounds to justify contravening the development standard.

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42]).

There are sufficient environmental planning grounds to justify a flexible approach to the application of the height control as it applies to the site. In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. The applicable circumstances that relate to the site are discussed below.

5.1 Concept DA Approval (DA-585/2019)

In approving the Concept Proposal (DA-585/2019) for the site, the Sydney Western City Planning Panel approved variations to the same building separation development standards in the same locations, proposed with this variation request, but of a greater magnitude. The panel in its determination and statement of reasons noted the following in relation to its support for the Clause 4.6 Variation request:

Application to vary a development standard

There are two areas of non-compliance with Clause 7.4(2)(d) and Clause 7.4(2)(e) of the Liverpool LEP 2008 concerning building separation arising from the proposed concept:

- (i) *First, a nil separation is provided from the proposed south-western building envelope to the existing mixed-use building at 300 Macquarie Street up to nine storeys high. That non-compliance arises in the context of 300 Macquarie Street presenting a blank rear wall its western boundary, with all apartments and tenancies of that building oriented to the north west. Issues of visual appearance, privacy and solar access which are the objectives of the standards are therefore unlikely to be compromised through that non-compliance.*
- (ii) *Second, adjacent to the central thoroughfare between Scott Street and Terminus Street, separation between the proposed south-western tower envelope and the eastern tower envelope is 12m above 45m in height, whereas the minimum separation required at this height by Clause 7.4(2)(e) strictly applied is 28m. The proposed variation to this development standard ranges from around 7m (25%) to 16m (57%).*

Again however, the panel is satisfied that the aims of achieving a superior outcome in terms of visual appearance, privacy and solar access can be achieved without strict compliance provided that the final DA design responds to the pinch point between the two built forms with strong articulation and a creative approach to the final facades. That process has been begun with the rotation of the above podium tower on the western side of the thoroughfare. The issue of wind velocity between the two building elements will require further attention at detailed DA stage and potentially will require modelling of the final proposals to ensure a satisfactory result. Shadow modelling has been supplied to demonstrate that adequate compliance can be achieved in future detailed designs.

The Panel was particularly persuaded by the information included with the concept proposal to the effect that the envelopes for which approval is sought have been "deliberately designed as a 'loose fit' with sufficient excess volume to allow for design excellence to be achieved through the detailed building design and articulation". The Panel will look to see that commitment carried through to the final design, and anticipates that it will be a strong theme in future consultation with Council's Design Excellence Advisory Panel.

It is on that basis that following careful consideration of the design against the written request from the applicant, made under cl 4.6 (3) of the Liverpool Local Environmental Plan 2008 (LEP), that the Panel is satisfied that the proposal has demonstrated that:

- a) compliance with Clause 7.4(2)(d) and Clause 7.4(2)(e) of the Liverpool LEP 2008 is unreasonable or unnecessary in the circumstances; and*
- b) there are sufficient environmental planning grounds to justify contravening the development standards.*

The panel is satisfied that:

- a) the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and*
- b) the development is in the public interest because it is consistent with the objectives of Clause 7.4(2)(d) and Clause 7.4(2)(e) of the LEP and the objectives for development in the B4 Mixed Use zone; and*
- c) the concurrence of the Secretary to the variation has been assumed.*

On the basis that the consent authority has recently determined that variations greater than those proposed with this request (in the same locations) satisfy the requirement of Clause 4.6 of the Liverpool LEP 2008, it is considered that there are sufficient environmental planning grounds to support the proposed variations. The variations the subject of this request are of a lesser magnitude given the proposed buildings do not occupy the full extent of the approved building envelopes.

5.2 Site characteristics

The following subsections outline the site characteristics that present as the environmental planning grounds to justify the proposed western building separations.

As detailed throughout this report, the design of the existing mixed use building at 300 Macquarie Street has directly led to the proposed western variations. This building comprises a unique design in response to the site opportunities and constraints. The design captures amenity over the heritage listed Memorial Arts Building (and curtilage), and thereby orients all private apartments and tenancies to the north west enhancing views and solar access. As a result, this building turns its back on the subject site, by presenting a rear party wall with no windows or private balconies located at this frontage. Moreover, it presents a blank wall to its east and therefore does not have any residences or tenancies fronting the subject site at this location.

The proposed reduced setback and abutting party wall, along with the 2.6m – 5.5m separation to the east of 300 Macquarie Street will ensure the orderly and economic development of the site and the whole block, allowing any future redevelopment of 300 Macquarie Street to occur with a primarily northern orientation. It also allows the south-western building to respond to this potential future scenario by primarily orientating its outlook in other directions. Accordingly, the proposed south-western building abuts the rear party wall up to its maximum height of nine storeys and in effect screens the party wall and the blank eastern wall of 300 Macquarie Street from the public domain. This is considered an improved urban design outcome and is a sufficient environmental planning ground to justify the western variations.

5.3 Consistency with the objects of the Environmental Planning and Assessment Act 1979

In *Initial Action*, the Court stated that the phrase “environmental planning grounds” is not defined but would refer grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, in **Table 1** we consider how the proposed development is consistent with each object, despite the proposed variation of the building separation development standard.

Table 1: Assessment of proposed development against the objects of the EP&A Act

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	The proposed building separations will promote the economic and social welfare of the community through the introduction of a tangible improvement in built form in the area that will respond appropriately to the strategic need for new public and employment generating infrastructure in a growing metropolitan centre.

Object	Comment
	The proposed development will provide for new construction and operational jobs in close proximity of public transport. Further, the attraction of employees and visitors is reasonably expected to provide a higher per capita expenditure and boost to the local economy than the existing use of the site. This will ultimately assist in supporting the on-going prosperity of Liverpool.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The proposed development including the building separations will not preclude the development from achieving ecologically sustainable development by ensuring compliance with the performance standards for the energy efficiency of buildings. Further, the building separation variations are in locations that will have no negative impact on environmental and social considerations and will support the economic health of the City's Metropolitan Centre.
c) to promote the orderly and economic use and development of land	The site is significantly underutilised and is largely occupied by low scale commercial buildings and car parks in need of urban regeneration. The site is strategically located within the Liverpool CBD and has excellent amenity and access to public transport. The proposed development with varied building separations is considered to be a balanced and orderly design outcome that responds to the unique characteristics of the site and does not represent the over intensification of land.
(d) to promote the delivery and maintenance of affordable housing,	This object is not relevant to this proposed development.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	The proposed development will have no impact on threatened species or ecological communities.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	The proposed development will interfere with the sustainable management of the heritage listed Memorial Arts building.
(g) to promote good design and amenity of the built environment,	The proposed development has been designed by renowned architects FJMT and has been reviewed by Council's Design Excellence Advisory Panel. The proposed development is consciously good design in this regard. The proposed variation to the building separation development standard will result in an urban design outcome commensurate with the site's strategic and locational attributes as a growing CBD in Greater Western Sydney. The proposed development is compatible with the scale of the emerging development in the Liverpool city centre and it will not result in an additional adverse environmental impact on the surrounding area as detailed at Section 4.1 above.
h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposed building separations will not preclude the development from complying with all relevant BCA codes and from promoting the health and safety of occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	This object is not relevant to this proposed development.
j) to provide increased opportunity for community participation in environmental planning and assessment.	The proposed development will be publicly notified in accordance with Council's requirements.

6.0 **Clause 4.6(4)(A)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out**

In *Initial Action* it is established that it is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. Accordingly, it is demonstrated throughout this clause 4.6 that the proposal is in the public interest as it is entirely consistent with the objectives of the development standard and the objectives of the zone.

6.1 **Consistency with the objectives of the development standard**

The proposed development is consistent with the objectives of the building separation development standard, for the reasons discussed in **Section 4.1** of this report.

6.2 **Consistency with the B4 – Mixed Use Zone**

To provide a mixture of compatible land uses

The proposed development will facilitate a true mixed-use precinct. As outlined in the SEE, this proposed development seeks approval for various uses within two separate buildings, along with a significant expanse of public domain. Specifically:

- Construction and use of a six (6) storey information and education facility (public library);
- Construction and use of a fourteen (14) storey mixed use building comprising:
 - Eight (8) storeys of public administration building floor space to be occupied by Liverpool City Council;
 - Four (4) storeys of commercial premises (office) floor space;
 - Single storey above ground child care centre on Level 6; and
 - A single storey of rooftop plant;
- Construction of a five (5) level basement, including:
 - 343 parking spaces to service the development; and
 - 153 public car parking spaces;
 - Motorcycle, bicycle parking spaces and end of trip facilities; and
 - Loading dock facilities;
- Landscaping and public domain works including:
 - an internal shared road connecting to Scott Street with basement access;
 - a public plaza fronting Scott Street; and
 - an elevated pocket park fronting Terminus Street.
- Extension and augmentation of services and infrastructure as required.

As such, it is abundantly clear that the proposed development includes a mix of compatible uses and the proposed variations to the building separation development standard does not stifle this.

To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling

The site is located approximately 300m from Liverpool Railway Station and is in the Liverpool CBD which is well serviced by public transport. The proposed development will therefore contain various uses in a location that is close to key transport infrastructure and will allow the integration of suitable uses in an accessible location, encouraging public transit patronage. Bicycle parking and end of trip facilities are also integrated into the

development which will help to encourage active transportation, including walking and cycling. The proposed variation to the development standard is therefore consistent with this objective.

To allow for residential and other accommodation in the Liverpool city centre, while maintaining active retail, business or other non-residential uses at street level

The proposed development does not include any residential uses, however it involves a highly activated ground plane comprising public administration and information and education facility uses, as well as a public domain area. The proposed variation to the development standard is therefore consistent with this objective.

To facilitate a high standard of urban design, convenient urban living and exceptional public amenity

As outlined at **Section 4.1**, the proposed building separations do not result in an adverse urban design impact nor in any significant adverse environmental impact. The podium height of the south-western building has been informed by the datum of the existing mixed-use building on site. Further to this, the proposed building separations will not compromise the amenity received by the central public domain or the units within the mixed use building at 300 Macquarie Street.

6.3 Building separation in a CBD context

The building separation development standards contained under clause 7.4 have been embedded in the Liverpool LEP 2008 for over a decade. In the time since, the strategic vision for Liverpool has evolved which is supported by key strategic plans prepared by the NSW State Government, including the Greater Sydney Region Plan 'A Metropolis of Three Cities' and the Western City District Plan. Specifically, the State Government has identified Liverpool as a Metropolitan Centre within the Western Parkland City identifying that:

The established centres of Liverpool, Greater Penrith and Campbelltown-Macarthur will be critical locations for commercial and retail businesses and health, education and other services as the city grows.

Given the location of the site within the Liverpool Metropolitan Centre and the strategic objectives for Liverpool as set out in the Greater Sydney Region Plan 'A Metropolis of Three Cities' and the Western City District Plan it is more appropriate to consider the proposed development against the typical characteristics of a site within a growing strategic metropolitan centre. Accordingly, the setbacks illustrated in **Figure 1** above, would be consistent with the building separation controls within other Sydney Metropolitan Centres, such as Sydney CBD, Parramatta CBD and North Sydney CBD. Specifically, the following benchmarks have been drawn.

- Sydney DCP 2012 – Section 5 Central Sydney
 - Above a height of 45m, windows or balconies of commercial buildings are to be set back at least 3m from side and rear property boundary. In new commercial buildings, windows at the same level as the principal living room windows or balconies of adjacent residential buildings, or above a height of 45m are to be set back from side and rear boundaries by at least 3m. **Walls without windows do not need to be set back.**
- Parramatta DCP 2012 – Section 4 Parramatta City Centre
 - Above a height of 54m, the minimum building setbacks from the side property boundaries is 6m, promoting inter tower separation of 12 metres for towers greater than 54m in height. The building separation distances between buildings on the same site are not to be less than those required between buildings on adjoining sites, unless it can be demonstrated that reducing the separation distances provides adequate privacy and solar access to the buildings concerned.
- North Sydney DCP 2012
 - Buildings containing non-residential activities must be set back a minimum of 3m from the property boundary where the adjoining site has balconies or windows to main living areas of dwellings or serviced apartments located at the same level.

Liverpool is the most proximate Metropolitan Centre to the future Western Sydney Airport Aerotropolis at Badgerys Creek. As such, it is abundantly clear that the strategic vision for Liverpool no longer reflects a low urban scale. Accordingly, the legacy building separations development standards, are not conducive to facilitating a growing Metropolitan Centre and this is reflected in by the inconsistency with the abovementioned controls.

7.0 Secretary's concurrence

Under Clause 4.6(5) of the Liverpool LEP 2008, the Secretary's concurrence is required prior to any variation being granted. Under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018 to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under clause 4.6, subject to the conditions in the table in the notice. We note that none of the conditions in the table apply to the proposed development, therefore the Secretary's concurrence is assumed. Nevertheless, the following section provides a response to those matters set out in clause 4.6(5) of the Liverpool LEP 2008 which must be considered by the Secretary.

7.1 Clause 4.6(5)(a): Whether a contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation does not raise any matters of significance for State or regional environmental planning. The variation to the building separation development standard will not contravene any overarching State or regional objectives or standards or have any effect outside the site's immediate area.

7.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

Maintaining the development standard would not result in any public benefit in this situation. The site is significantly underutilised and is subject to challenging development constraints. Strict numerical compliance would not yield a development that would be commensurate with the objectives of the strategically important 'opportunity sites' stipulated under clause 7.5A of the Liverpool LEP 2008. We note, the FSR is well below the 10:1 envisaged for opportunity sites under the Liverpool LEP 2008. In this regard, it is abundantly clear that the proposed variations will not result in the over intensification of the site.

The reduction of the building separations would result in the Applicant exploring an alternate land use to ensure the commercial viability of the site. This would result in a lost opportunity to deliver the Liverpool Civic Place envisaged by Council and the community. Strict numerical compliance in this instance would compromise the integrity of this design response, by requiring that the proponent reconsider the reallocation of building mass on the site, or otherwise risk the viability of the development and encumber the various community and commercial benefits the proposed development will provide.

The proposed variation is in the public interest as it:

- enables additional opportunities to create a vibrant, accessible place for future tenants and the local community;
- creates additional jobs required to grow a competitive commercial core;
- enhances and responds sensitively to the rich heritage setting, creating spaces that reflect the civic scale and significance of the immediate precinct;
- does not result in any additional adverse environmental impacts; and
- the reference design demonstrates that the building envelopes would accommodate a development which is significantly below the maximum permissible GFA, as such the extent of the non-compliance does not result in an over intensification of the site.

7.3 Clause 4.6(5)(c): Other matters required to be taken into consideration before granting concurrence

We are not aware of any other matters that the Secretary (or the consent authority, under delegation) is required to consider before granting concurrence.

8.0 Conclusion

This clause 4.6 variation request adequately addresses the matters in clause 4.6(3) by demonstrating that compliance with the building separation development standard contained in clause 7.4 of the Liverpool LEP 2008 is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify the contravention. It also demonstrates that the proposed development will be in the public interest because it is consistent with the objective of the building separation development standard and the objectives of the B4 Mixed Use zone.

This clause 4.6 variation demonstrates that, notwithstanding the proposed variation to the building separation development standard, the proposed variation is acceptable as:

- In approving the Concept Proposal (DA-585/2019) for the site, the Sydney Western City Planning Panel approved variations to the same building separation development standards in the same locations, proposed with this variation request, but of a greater magnitude. On the basis that the consent authority has recently determined that variations greater than those proposed with this request (in the same locations) satisfy the requirement of Clause 4.6 of the Liverpool LEP 2008, it is considered that there are sufficient environmental planning grounds to support the proposed variations;
- it is consistent with the objectives of the zone and also the building separation development standard in the Liverpool LEP 2008;
- it is compatible with the building separation/side setback provisions applicable to new developments in existing CBD contexts such as Sydney, Parramatta and North Sydney;
- it will not adversely impact on the amenity of surrounding land uses or development;
- the proposal accommodates a development significantly below the permissible GFA for the site, as such the extent of the variation does not result in an over intensification of the site;
- it will facilitate the orderly and economic redevelopment of an underutilised site in a strategic CBD location to a scale that is commensurate with the emerging development in the Liverpool commercial core; and
- it is in the public interest as it remains consistent with the objectives of the applicable land use zone and development standards and will provide additional employment opportunities in close proximity to an area which is well served by existing and emerging public transport and other services and facilities.

For the reasons set out in this variation request the development should be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the Liverpool LEP 2008.