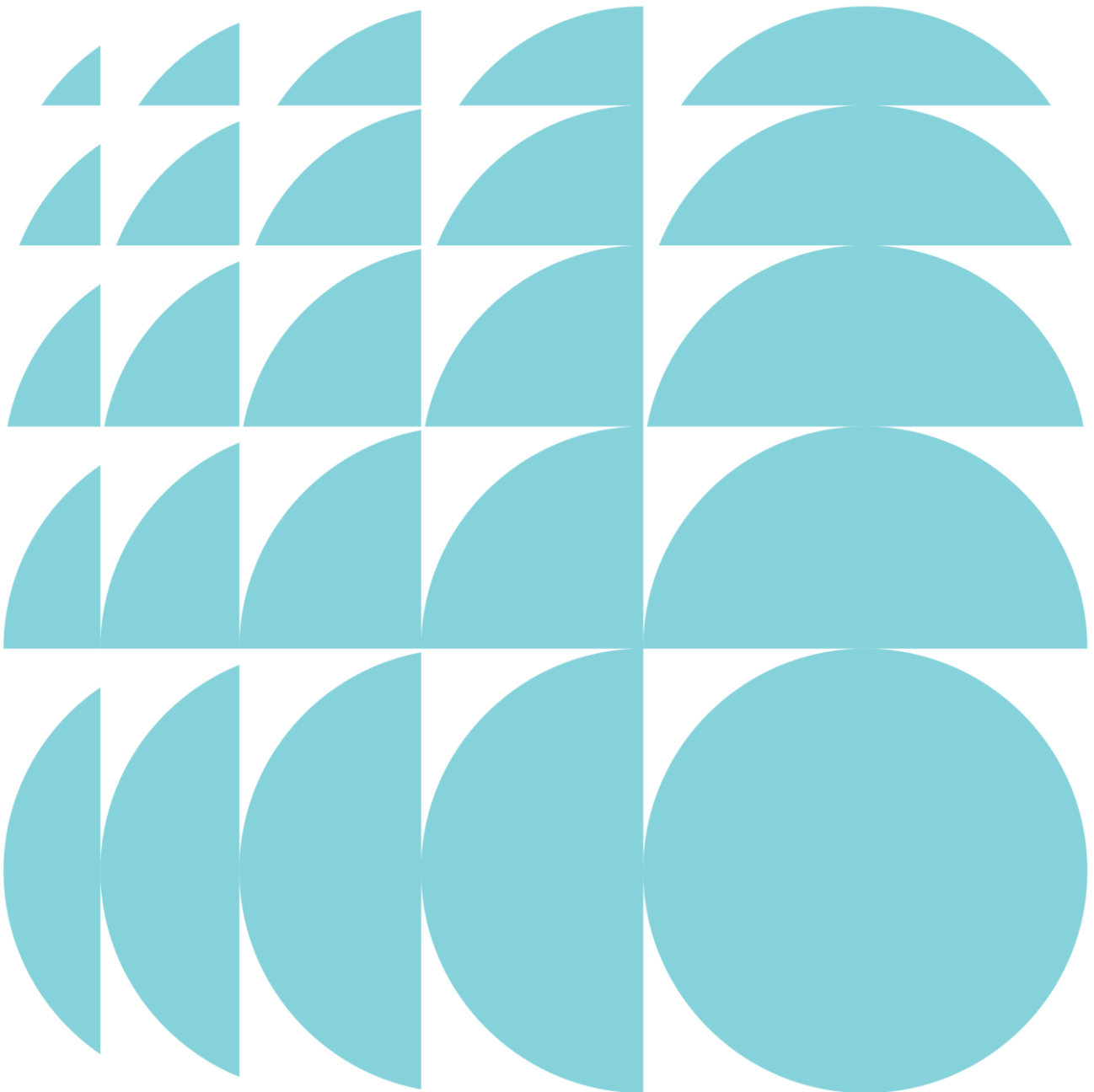


Clause 4.6 Variation request to development standard – building separation

52 Scott Street and 306-310 Macquarie Street, Liverpool
Liverpool Civic Place

Submitted to Liverpool City Council
On behalf of Built Development Group

5 May 2020 | 2190157



CONTACT

Andrew Duggan	Director	aduggan@ethosurban.com	02 9956 6962
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This document has been prepared by:



Luke Feltis

05 May 2020

This document has been reviewed by:



Andrew Duggan

05 May 2020

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VERSION NO.	DATE OF ISSUE	REVISION BY	APPROVED BY
A	16 September 2019	LF	AD
B	05 May 2020	LF	CFe

Ethos Urban Pty Ltd
ABN 13 615 087 931.
www.ethosurban.com
173 Sussex Street, Sydney
NSW 2000 t 61 2 9956 6952

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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 Concept Development Application, being a Concept Proposal for a new 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 2019 and the 'Response to request for additional information' ('RFI response') prepared by Ethos Urban and dated 4 May 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.

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) and Clause 7.4(2)(e) 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 three (3) variations specified below are the only variations to which this Clause 4.6 variation request relates. They are herein referred to as the central variation, western variation 1 and western variation 2. These variations are identified in red circles at **Figure 1** below.

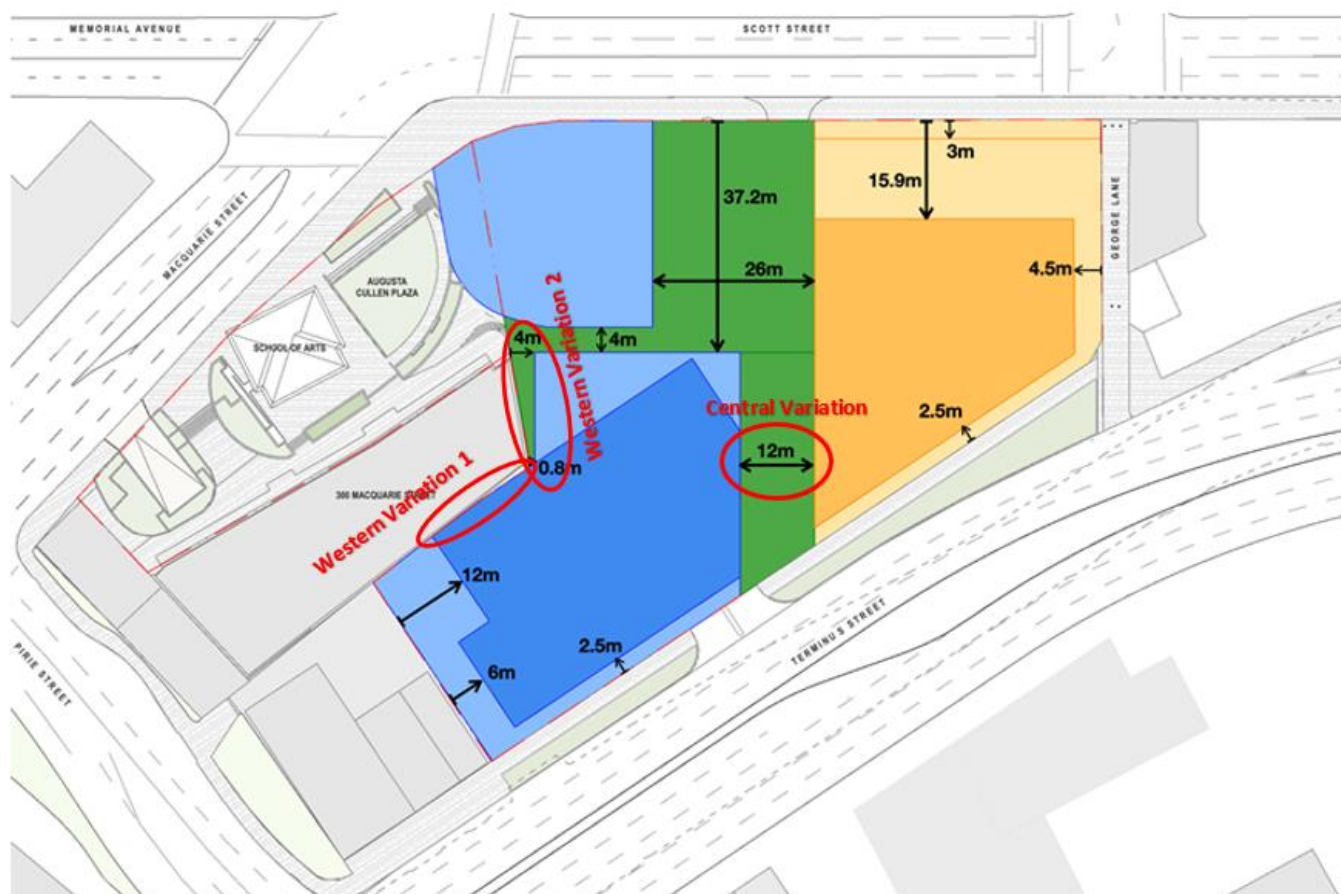


Figure 1: Visual representation of proposed building separation variations (towers indicated in darker shades)

Source: FJMT (with additions)

3.1 Central variation (internal)

As illustrated on the Building Envelope Drawings in Attachment B of the RFI response and in **Figure 1**, the proposed central separation between the proposed south-western tower envelope and the eastern tower envelope is 12m above 45m in height, in contravention of Clause 7.4(2)(e), which requires a minimum separation at this height to be 28m. The proposed variation to this development standard ranges from 7m (25%) to 16m (57%).

3.2 Western variation 1 (adjoining site)

As illustrated in the Building Envelope Drawings in **Attachment B** of the RFI response and in **Figure 1** above, a nil separation is proposed from the south-western building envelope 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 envelope is greater than 12 metres in height (RL 56.7 at the podium and RL 84.25 at the tower) and 300 Macquarie Street is greater than 25 metres in height but less than 45 metres in height. The nil 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 1**) and all apartments and tenancies are oriented to the north west away from the site (refer to **Figure 2**).

3.3 Western variation 2 (adjoining site)

As illustrated in the building envelope drawings in Attachment B of the RFI response and in **Figure 1**, a varied building separation of between 0.8m and 4m is proposed between the northern section of the podium of the south western building envelope 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 56.7) 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 2: Rear elevation (party wall) of the mixed use building located at 300 Macquarie Street



Figure 3: 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 Concept Proposal below. This is also reinforced within Section 5.0 of the SEE and the Design Report in Appendix C of the SEE, as well as the supplementary material provided in the RFI response.

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 Concept Proposal (including the proposed building separation variations) has been designed to facilitate highly visible, transparent public facilities in this location as discussed below.

Central variation

A fundamental urban design principle to enhance the site's visual appearance is to recognise the historic Liverpool 'Hoddle grid', with an extension of the George Street service way, as illustrated in **Figure 4**. Unlike George Street, Macquarie Street and Scott Street, the service way is not itself heritage listed, however, recognising the alignment of the service way through the site is a conscious urban design gesture to enhance the visual appearance of the Concept Proposal. The separation distance between the south-western building envelope and the eastern building envelope has been informed by the spatial characteristics of the service grid.

In this regard, the central separation is predominantly 12m and extends to 21m due to the orientation of the south-western building envelope, as illustrated in **Figure 5**. This massing is considered to stitch into the urban fabric in a much stronger and more sympathetic manner, creating a superior visual appearance outcome for the site.

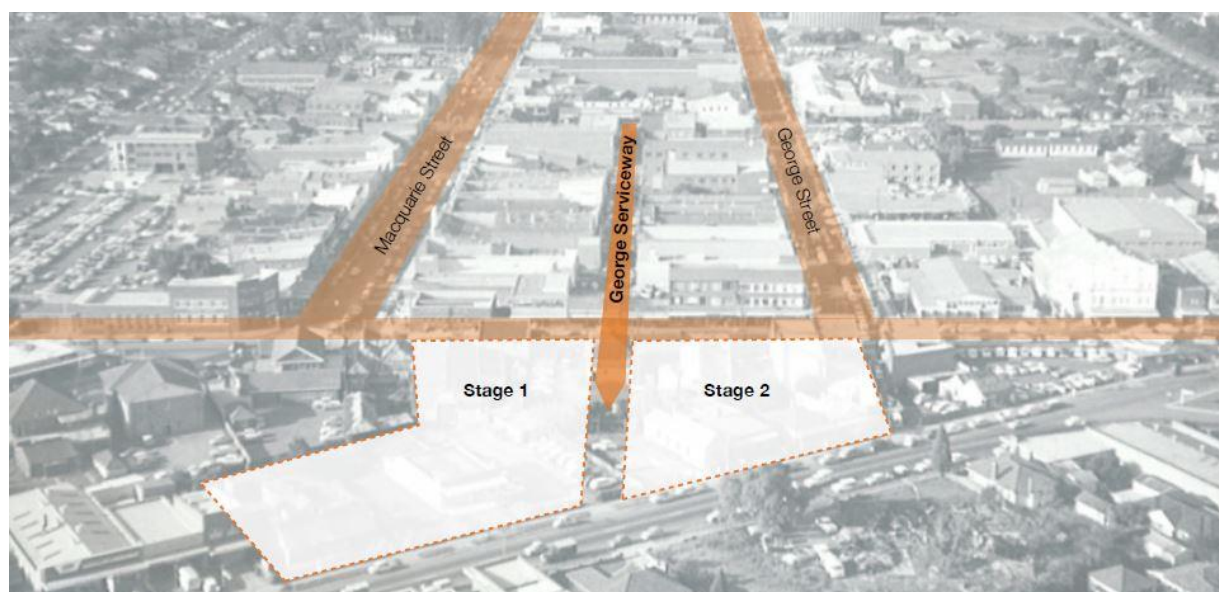


Figure 4: Hoddle grid characteristic

Source: FJMT

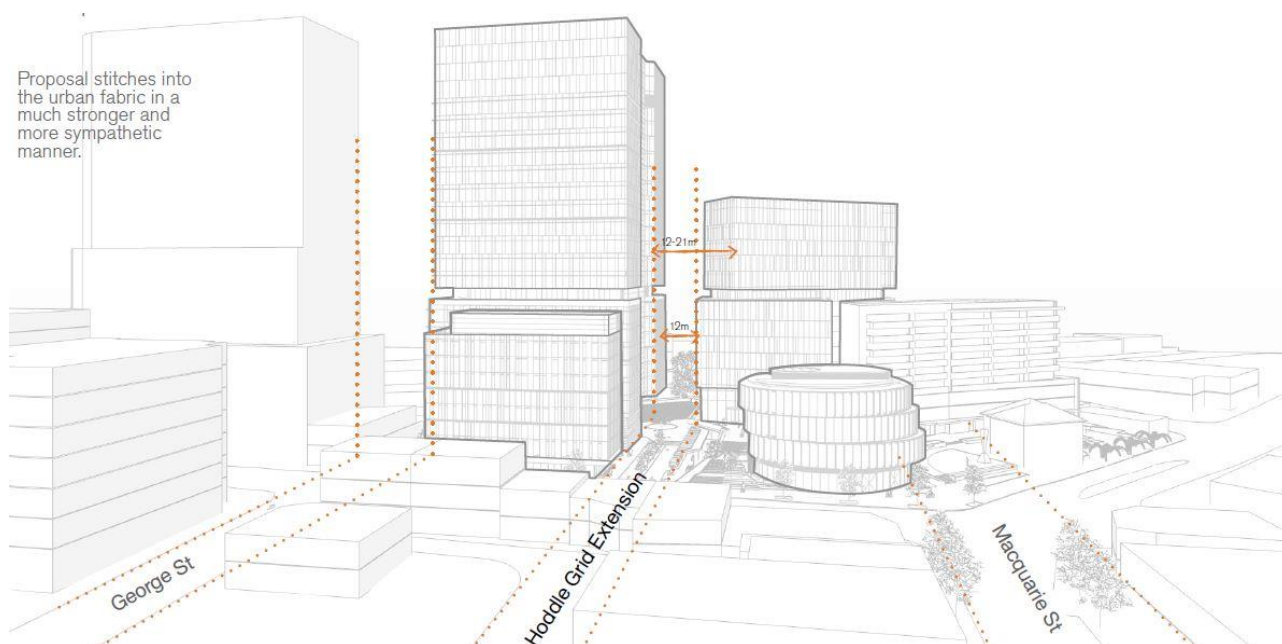


Figure 5: Hoddle grid informed building separation

Source: FJMT

Western variations

As identified in **Section 3.0**, two additional building separation variations are proposed at the interface between the south western building envelope 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 finalised in late 2016. The Concept Proposal proposes a building envelope with a nil setback to the rear of the mixed-use building, thereby abutting its rear party wall up to its maximum height of nine storeys (refer to **Figure 2** above). It also proposes a separation distance ranging from 0.8m – 4.0m to the immediate east of 300 Macquarie Street, toward the existing blank wall of this development.

The proposed nil setback and abutting party wall 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 allow a future detailed design within the south-western building envelope to respond to this potential future scenario by primarily orientating its outlook in other directions. The 0.8m – 4.0m 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 proposed south-western building envelope. 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 southern western building envelope and the eastern building envelope has been informed by the datum of the existing mixed-use building, as illustrated at **Figure 6**. This presents an appropriate visual appearance in the context of this building.

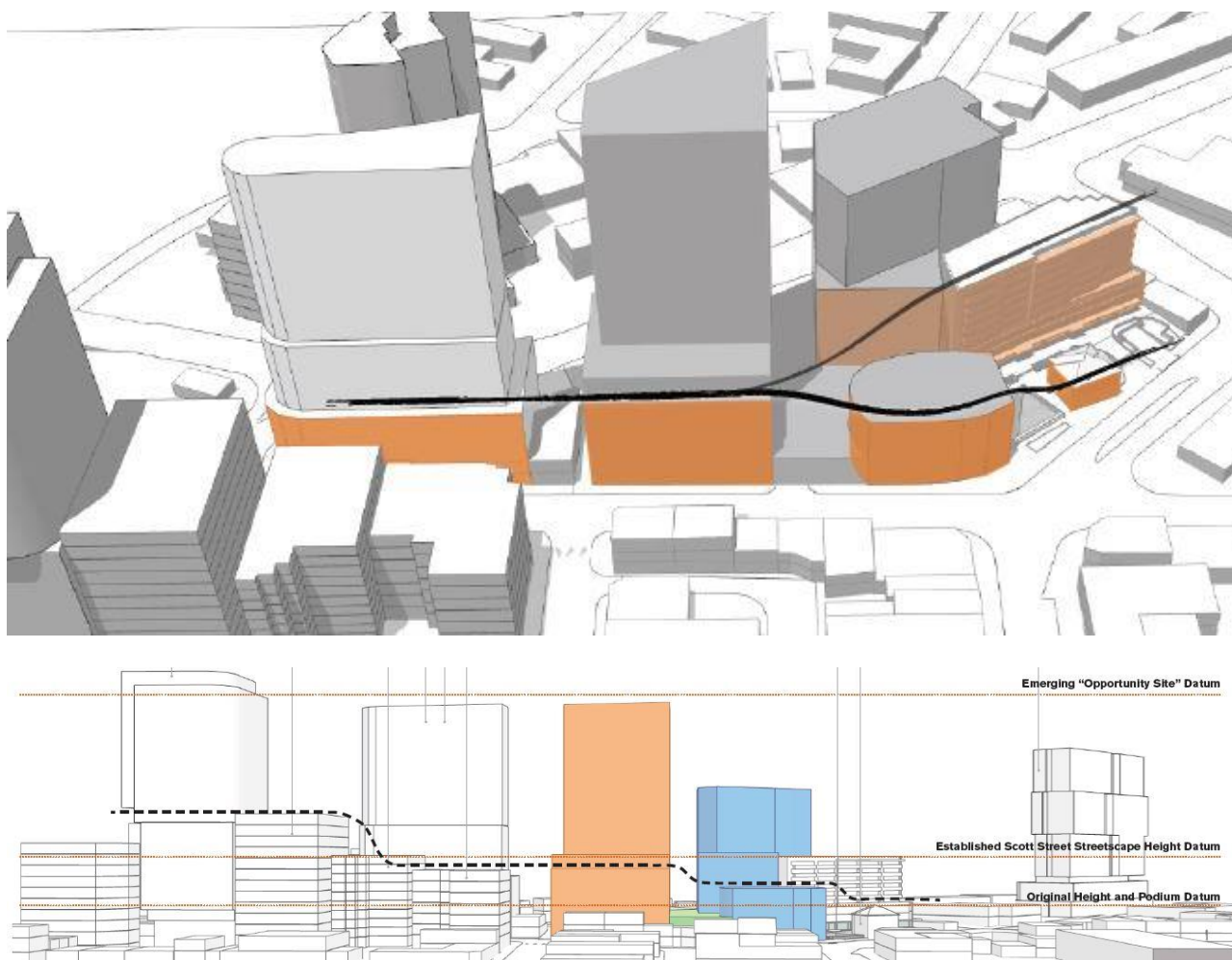


Figure 6: Scott Street frontage heights (including indicative future surrounding development)

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.

Central variation

The central separation is dividing a proposed building envelope with a maximum height of RL 84.25 for the purpose of a public administration building use, and either (or a combination of) commercial premises or child-care centre uses, and a proposed eastern building envelope with a maximum height of RL 118.85, which will accommodate either (or a combination of) commercial premises, educational establishments, tourist and visitor accommodation or boarding house (student accommodation) uses. In the absence of any sensitive residential use and by virtue of the proposed uses, the privacy impacts which are internal to the site are considered negligible.

Western variations

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 envelope (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 Concept Proposal will have no impact on the privacy to this building.

4.1.3 Solar access

The elements which 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 Supplementary Design Report in **Attachment D** of the RFI response). For absolute clarity, the shadow diagrams are based on the proposed concept envelopes during the winter solstice as illustrated at **Figure 7**. As such, this represents the worst case scenario. The envelopes are 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. In this way the detailed designs will present an improved overshadowing outcome.

Central variation

The central building separation will maintain a high level of solar access to surrounding development and key areas of the public domain and through-site link dividing the site. The shadow cast by the Concept Proposal allows the new public domain area to the east of the library to be provided with quality solar access throughout the day. As can be seen on the shadow diagrams, the shadow cast by the proposed development during the winter solstice will reach south of Pirie Street but pass over residential blocks allowing over 3 hours sunlight between 9am and 3pm. The primary open space on Scott / Macquarie Streets receives over 5 hours of sun, from 11am until the afternoon. Council's main facade receives sunlight during the early morning, between 9am to 12pm. The two tower volumes are placed at the southern end of the site to reduce overshadowing of public spaces. Shadows are predominantly cast over Terminus Street and the commercial zone to the south. Whilst some overshadowing ensues, this is appropriate within an urbanised and growing metropolitan centre.

Western variations

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 negligible shadow impact. 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.

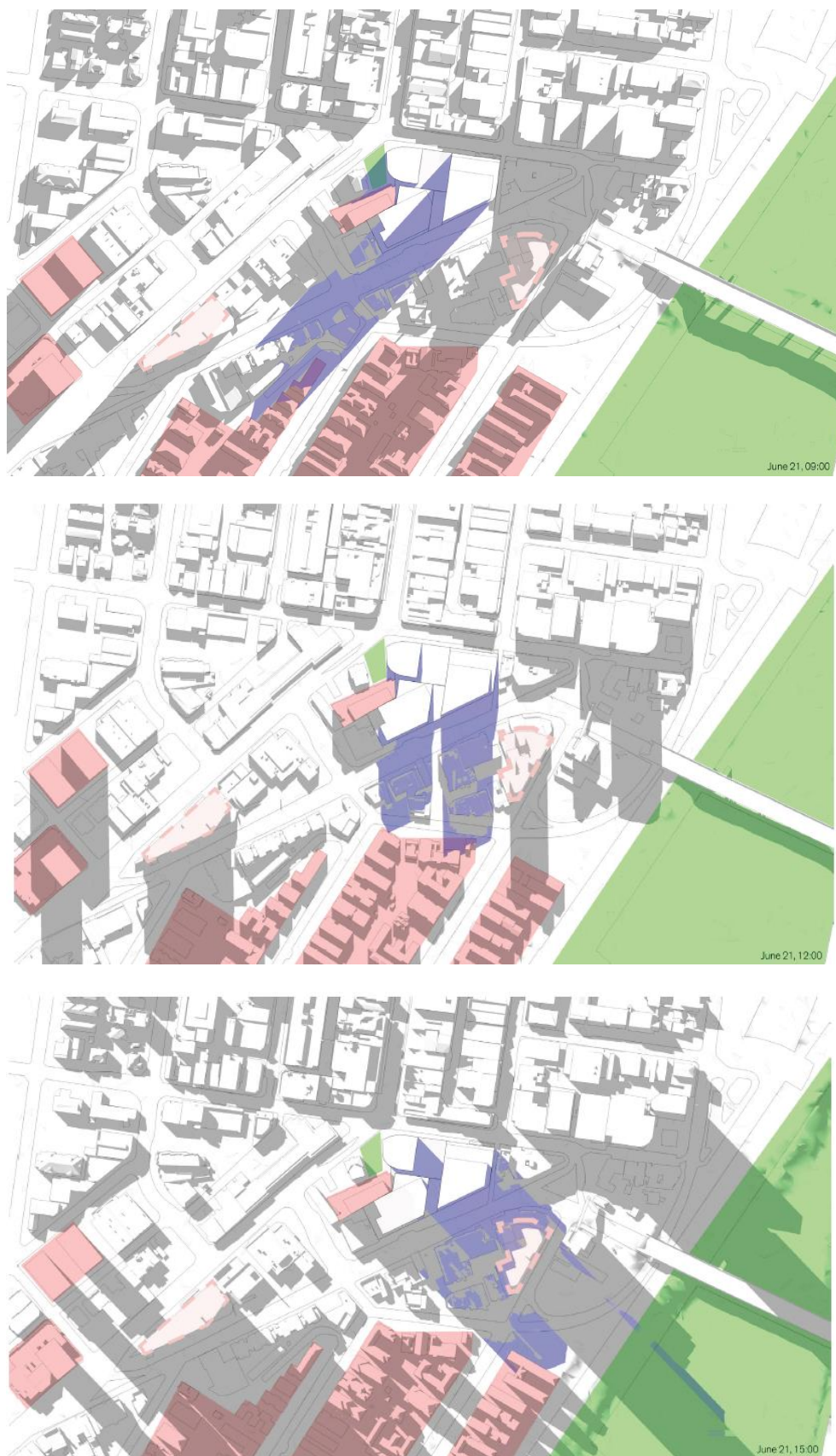


Figure 7: Winter Solstice Shadow Diagrams

Source: FJMT

4.1.4 Wind impact

Whilst wind impact is 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 N** of the SEE and a supplementary assessment provided in **Attachment E** of the RFI response. 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 the proposed envelope layout is relatively exposed to the three prevailing wind directions affecting the site. As a result, there is a possible slight impact on the wind comfort within certain areas within the through-site link plaza. Notwithstanding this, as no physical works are proposed, Windtech has recommended a number of wind mitigation features be considered in the development of the detailed design and analysed with wind tunnel testing. The recommendations are primarily relevant to the central building separation and include:

- Ground Level:
 - The inclusion of awnings along the Terminus Street frontage of the council and commercial buildings.
 - The inclusion of densely foliating evergreen trees and strategically positioned densely foliating evergreen shrubs/hedges along the Terminus Street entry areas to the Upper Civic Plaza.
 - The inclusion of strategically located densely foliating evergreen trees along the Scott Street pedestrian footpath areas and within the Civic Plaza.
 - The inclusion of strategic tree planting and vegetation within the landscape zones adjacent Augusta Cullen Plaza and along the pedestrian passageway between the Library and Council buildings.
 - The inclusion of strategically located densely foliating evergreen trees along the east, west pedestrian connection through the mixed use envelope should this eventuate.
- Levels 1, 2, 4 and 7 of the public administration building:
 - The inclusion of impermeable screens along the south-eastern perimeter of the Level 1 and Level 07 terraces.
 - The inclusion of impermeable screens along the eastern and western perimeter of the Level 2 terrace.
 - Increased planter area at the southern most corner of the Level 04 terrace. Include densely foliating evergreen shrubs/hedges within the Level 04 terrace planter boxes.
- Level 7 of mixed use building
 - The inclusion of impermeable screens at the western edges of the terrace.
 - Inclusion of strategically located densely foliating evergreen hedges along the northern and southern aspect of the terrace.

Windtech concludes that the Concept Proposal (including building variation separations) is capable of accommodating a development that can achieve suitable wind conditions for pedestrians in and around the site. This will be resolved through the detailed design of the development.

4.1.5 Summary

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

- The separation distance between the south-western building envelope and the eastern building envelope has been informed by the spatial characteristics of the George Street service grid. This is a visual gesture to the heritage significant 'Hoddle grid'.
- 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 envelope has been informed by the datum of the existing mixed-use building.
- The central separation is dividing non-residential uses. As such, privacy impacts internal to the site are considered negligible.
- 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 Concept Proposal 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 Concept Proposal (including building variation separations) is capable of accommodating a development that can achieve suitable wind conditions for pedestrians in and around the site.

It is emphasised that the proposed building envelopes (including the proposed variations) set the maximum vertical and horizontal parameters of building lines and the proposed GFA can easily be accommodated within the envelopes. The envelopes are 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 Applicant is committed to working with Council's Design Excellence Advisory Panel so that the future detailed DA's exhibit design excellence.

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 PLEP 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 Site characteristics

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

Western variations – design of the adjoining development (300 Macquarie Street)

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 nil setback and abutting party wall, along with the 0.8 – 4.0m 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 will also allow a future detailed design within the south-western building envelope to respond to this potential future scenario by primarily orientating its outlook in other directions. Accordingly, the proposed south western building envelope 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.

Central variation – land use separation

The central separation divides a proposed south western building envelope with a maximum height of RL 84.25 for the purpose of a public administration building use, and either (or a combination of) commercial premises or child-care centre uses, and a proposed eastern building envelope with a maximum height of RL 118.85 which will accommodate either (or a combination of) commercial premises, educational establishments, tourist and visitor accommodation or boarding house (student accommodation) uses.

The eastern and western building envelopes do not contain any residential uses. As a result, the envelope design does not warrant a large separation, which would otherwise be required to maintain high levels of privacy to any private dwellings in the circumstance of residential development. As illustrated in the reference design, it is envisaged that the central variation will be dividing a public administration use within the western tower envelope and a commercial or educational establishment use within the eastern envelope. It is widely accepted that these uses can coexist in neighbouring buildings without warranting a significant building separation to maintain privacy. In the absence of any significant sensitivities between this mix of uses, the nature of the proposed uses within the eastern and western tower envelopes is considered to be a sufficient environmental planning ground to justify the central variation.

In addition to this, it is highlighted that the central variation relates to the secondary façade or short sides of the building envelopes. The primary facades of the western envelope are oriented to the north west and south west and the primary facades of the eastern envelope are oriented to the north and the south.

Central variation – Liverpool CBD ‘Hoddle Grid’

The site is located in a local context that is characterised by the heritage significant ‘Hoddle grid’ network as detailed at **Section 4.1.1**. The central building variation is a result of creating a building separation between the eastern and western envelopes that has been informed by the spatial characteristics the George Lane as illustrated at **Figure 8** below. This is considered a strong urban design move which is unique to the site, which will stitch the Concept Proposal to its local urban context and in conjunction with the separation of uses argument above, is a sufficient environmental planning ground to justify the central variation.

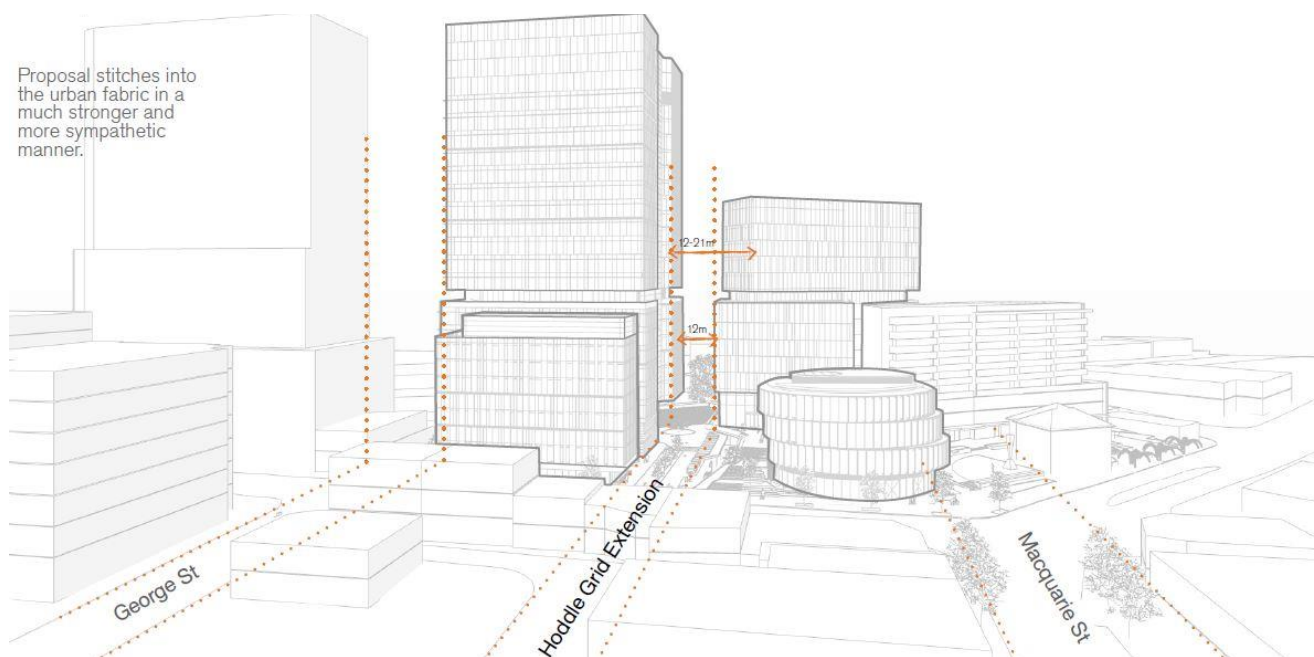


Figure 8: Hoddle grid informed building separation

Source: FJMT

5.2 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, nevertheless, in **Table 1** we consider how the proposed development is consistent with each object, notwithstanding 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	<p>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.</p> <p>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.</p>
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	<p>The Concept Proposal including the building separations will not preclude future detailed building designs 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.</p>
(c) to promote the orderly and economic use and development of land	<p>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 Concept Proposal 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.</p>

Object	Comment
(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),	A fundamental urban design principle to enhance the site's visual appearance is to recognise the heritage significant Liverpool 'Hoddle grid' with an extension of the George Street service way, as illustrated at Figure 3 above. Unlike George Street Macquarie Street and Scott Street, the service way is not itself heritage listed, however this is a conscious urban design gesture to enhance the visual appearance of the Concept Proposal. As such, the proposed central building separation variation is a direct response to the site's heritage context.
(g) to promote good design and amenity of the built environment,	The Concept Proposal has been designed by renowned architects FJMT and will be subject to a review from Council Design Excellence Advisory Panel. The Concept Proposal is consciously good design in this regard. The proposed variation to the building separation development standard will result in urban design outcome commensurate with the site's strategic and locational attributes as a growing CBD is Greater Western Sydney. The Concept Proposal 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,	This object is not relevant to the Concept Proposal as no physical works are proposed. Notwithstanding this, proposed building separations will not preclude future detailed designs from complying with all relevant BCA codes and will promote 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 Concept Proposal will facilitate a true mixed-use precinct. As outlined in the SEE, This Concept Proposal seeks approval for various uses within proposed building envelopes. Specifically:

- A building envelope with a maximum height of RL 43.45 for the purpose of an information and education facility (public library) use.
- A building envelope with a maximum height of RL 84.25 for the purpose of a public administration building use, and either (or a combination of) commercial premises or child-care centre uses.
- A building envelope with a maximum height of RL 118.85 which will accommodate either (or a combination of) commercial premises, educational establishments, tourist and visitor accommodation or boarding house (student accommodation) uses.
- A landscaping and public domain concept including the provision of a public through-site link running north to south through the site, connecting Scott Street to the north through to Terminus Street to the south; and
- A building envelope for a three-level shared basement car park across the entire site to accommodate parking for all future uses (approximately 413 spaces, to be determined as part of future detailed DAs) and accommodating a public car park to be owned by Council.

As such, is abundantly clear that the Concept Proposal includes a mix of compatible uses in a new civic precinct 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 Rail Station and is in the Liverpool CBD which is well serviced by bus public transport. The Concept Proposal will therefore contain various uses in a location that is close to existing and future transport infrastructure and will allow the integration of suitable uses in an accessible location, encouraging public transit patronage. Bicycle parking and end of journey facilities will also be integrated into the detailed design 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 Concept Proposal does not seek consent for the program of any buildings however, the detailed designs will present a highly activated ground plane with retail, commercial and civic uses. 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 of result in any significant adverse environmental impact. The central building separation variation is generally consistent with the spatial characteristics of the Liverpool 'Hoddle grid', as such the variation is generated by an urban design gesture to the local historical context. Further to this, the proposed building separations do not result will not compromise the amenity received to 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 Concept Proposal 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 Concept Proposal, 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 concept development that would be commensurate with the objectives of the strategically important 'opportunity sites' stipulated under clause 7.5 of the Liverpool LEP 2008. We note, the indicative FSR of the reference design (5.52:1) 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. Tenants;
- will result in a positive urban design relationship with the heritage significant 'Hoddle grid'.
- 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:

- 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 development 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 reference design demonstrates that the building envelopes would accommodate 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 compatible scale as 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.