

Clause 4.6 Variation Request

Liverpool Civic Place Phase B - BTR

52 Scott Street, Liverpool

Submitted to Department of Planning, Housing and Infrastructure
on behalf of Built Development Group



'Gura Bulga'

Liz Belanjee Cameron

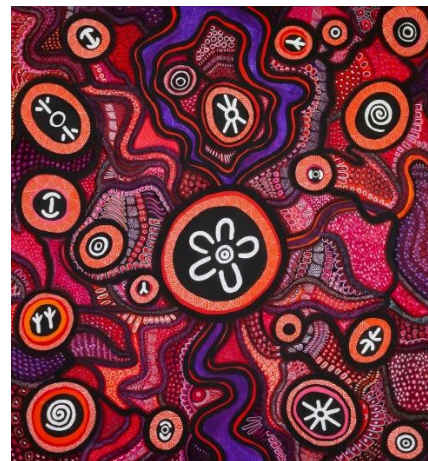
'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.



'Gadalung Djarri'

Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We pay our respects to their Elders past, present and emerging.

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

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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 the Department of Planning, Housing and Infrastructure (DPHI) in support of a State significant development application (SSDA) for the proposed build-to-rent shop top housing development comprising a build-to-rent residential use and ground floor retail premises within Phase B of Liverpool Civic Place at 52 Scott Street, Liverpool (the site).

Clause 4.6 of the *Liverpool Local Environmental Plan 2008* (Liverpool LEP 2008) enables the consent authority to grant consent for development even though the development contravenes a development standard of the Liverpool LEP 2008. This Clause 4.6 Variation Request relates to the development standard for building separation in Liverpool city centre under clause 7.4 of the Liverpool LEP 2008 and should be read in conjunction with the Environmental Impact Statement (EIS) prepared by Ethos Urban dated April 2024.

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development by allowing flexibility in particular circumstances. Clause 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated:

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

This document 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 contravention of the development standard. As such, this document satisfies the provisions of clause 35B(2) of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation).

The extent of the building separation variation relates to the proposed building and its separation from the existing mixed use civic building within Phase A of Liverpool Civic Place, which is situated to the west of the proposed building. This Clause 4.6 Variation Request demonstrates that notwithstanding the non-compliance with the building separation development standard:

- The proposed development achieves the objectives of clause 7.4 of the Liverpool LEP 2008:
 - The separation distance between the proposed build-to-rent shop top housing building and the mixed use civic building contained in Phase A of Liverpool Civic Place has been informed by the spatial characteristics of the George Street service grid. This is a visual gesture to the heritage significant 'Hoddle grid', which achieves a positive visual appearance. Moreover, the colour and materiality of the western façade that interfaces with the mixed use civic building harmoniously integrates with the broader Liverpool Civic Place precinct which further improves the visual appearance outcome.
 - The proposed design of the build-to-rent shop top housing building involves careful orientation and planning of apartments to maximise visual privacy, and also includes blank walls, and privacy treatment in the form of vertical louvred elements that provide directional view control, preventing views into the building, but allowing residents to see outside the building, and to gain daylight and solar access.
 - The proposed development results in less shadow cast compared to the approved concept DA envelope.
- The proposed development demonstrates that there are sufficient environmental planning grounds to vary the control in this instance because:
 - The proposed design of the building has been carefully designed to maximise visual privacy of apartments by ensuring that the primary orientation of the apartments at the western frontage of the development are oriented away from the mixed use civic building Liverpool Civic Place.
 - Privacy treatment in the form of vertical louvred façade elements providing directional view control ensure adequate privacy is achieved. Blank walls have also been included in parts of the design to eliminate visual privacy concerns. The colour and materiality of the façade treatment harmoniously integrates with the broader Liverpool Civic Place precinct and the proposed development.
 - The proposed building separation variation is informed by the spatial characteristics of the heritage significant 'Hoddle grid', and is a strong urban design move which will stitch the site into its local context, while providing additional building separation compared to the approved Concept DA (DA-585/2019).

Therefore, the SSDA may be approved with the proposed variation to clause 7.4 of the Liverpool LEP in accordance with the flexibility allowed under clause 4.6 of the Liverpool LEP.

2.0 Site and proposed development

2.1 Site description

The site is located at 52 Scott Street, Liverpool within the Liverpool City Council local government area, as illustrated in **Figure 1**. The site is located approximately 300m south west of Liverpool Railway Station and is also in the vicinity of a number of regionally significant land uses and features including Liverpool Hospital, Westfield Liverpool, Western Sydney University Liverpool Campus, the Georges River and Biggie Park public open space.

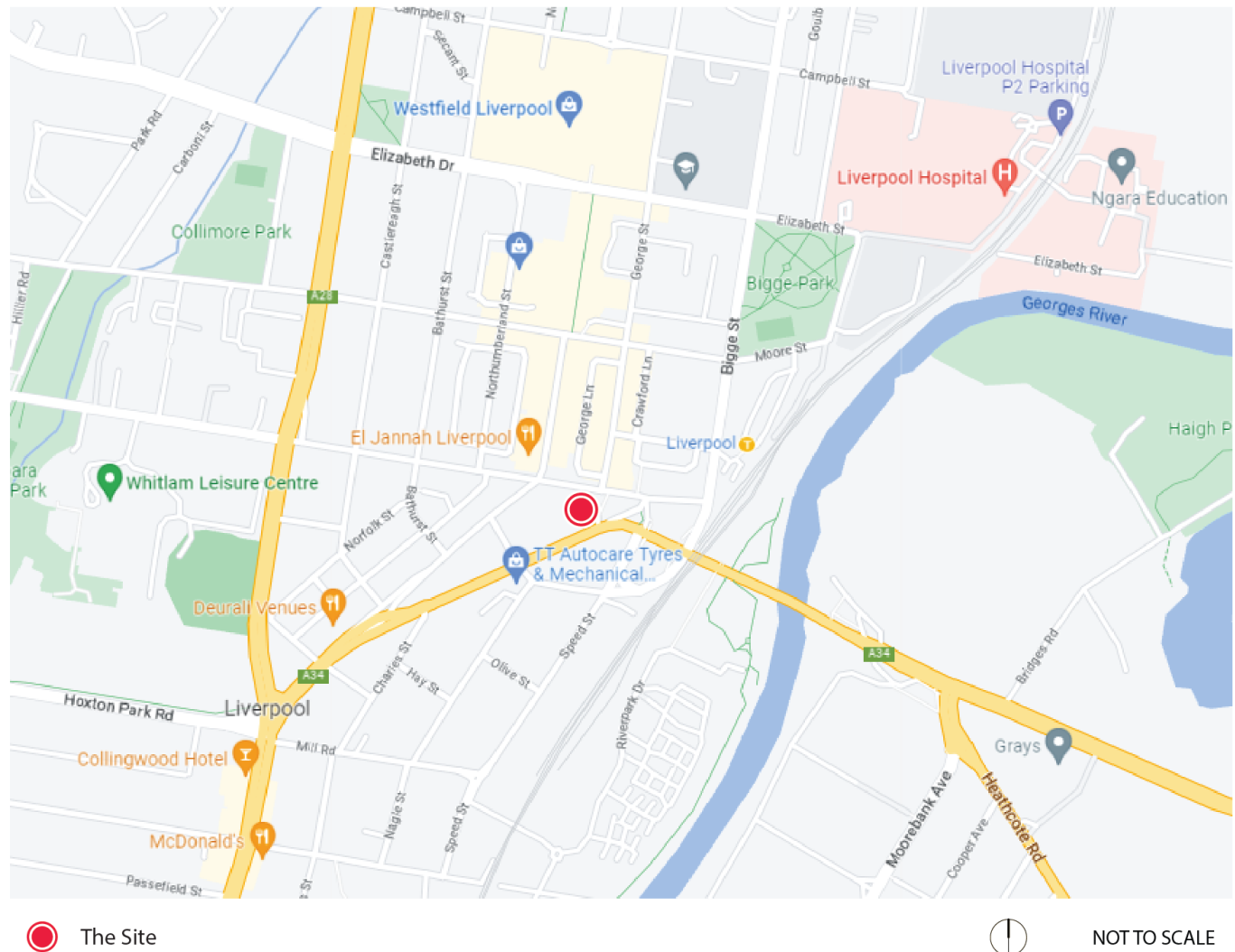


Figure 1 Site context

Source: Google Maps and Ethos Urban

The site is irregular in shape and is comprised of one lot legally described as Lot 1 in DP1293937. The site has a total area of 9,189.5m² and has three primary road frontages including a primary frontage to Scott Street (98m frontage) to the north, George Lane (40m frontage) to the east and Terminus Street (115m frontage) to the south. The site boundary also extends along Macquarie Street. An aerial image of the site is provided at **Figure 2**, which identifies the entire Liverpool Civic Place site and the Phase B component to which the proposal relates.

A Site Survey has also been prepared by Land Surveys and is included at **Appendix D**.



Figure 2 Site aerial

Source: Nearmap and Ethos Urban

2.2 Description of the proposed development

This SSDA seeks development consent for:

- Construction and use of a 29 storey build-to-rent shop top housing development, comprising:
 - ground floor residential build-to-rent lobby, associated resident amenities, and retail tenancies;
 - 320 dwellings in the above ground levels;
 - build-to-rent resident amenities on the lower and upper ground levels, as well as Level 9, including a cinema, workspace, gym, meeting rooms and outdoor BBQ area;
 - communal rooftop garden and outdoor open spaces;
- Landscaping and public domain works, including:
 - expansion and integration of the Phase A public domain, as well as the incorporation of new street trees, granite paving, verge planting and seating;
 - podium rooftop (Level 9) communal open space and landscaped elements;
 - rooftop communal open space and landscaped elements.
- Construction and use of three basement levels, including:
 - 119 car parking spaces (including 3 accessible spaces);
 - 202 bicycle parking spaces and end of trip facilities;
 - 11 motorbike parking spaces; and
 - loading dock facilities, including 2 spaces.
- Extension and augmentation of services and infrastructure as required.

Photomontages of the proposed development are provided in **Figure 3** and **Figure 4**.



Figure 3 *Proposed development in the context of the broader Liverpool Civic Place development*

Source: Scott Carver



Figure 4 *Photomontage of the proposed development as viewed from George Street in the north*

Source: Scott Carver

3.0 Development standard to be varied

This clause 4.6 variation request seeks to justify contravention of the development standard set out in 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 E2 Commercial Centre or MU1 Mixed Use, and

(e) 28 metres for parts of buildings 45 metres or more above ground level (finished) on land in Zone E2 Commercial Centre or MU1 Mixed Use.

(our emphasis bold)

The site is within the MU1 Mixed Use zone, as such it is land to which clause 7.4(2)(d) and 7.4(2)(e) applies, however the variation only relates to Clause 7.4(2)(e).

4.0 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 only variations to which this clause 4.6 request relates is the 'central variation', which involves separation from the approved and constructed mixed use civic building situated to the west of the site, within Phase A of Liverpool Civic Place. The variation is illustrated in **Figure 5** below and relates to the tower components of the building.

As illustrated in the Architectural Drawings in Appendix B of the EIS and in **Figure 5**, the building separation between the proposed build-to-rent tower and the approved mixed use civic building in Phase A of Liverpool Civic Place ranges from 13m to 22.94m. Clause 7.4(2)(e) of the Liverpool LEP 2008 requires a minimum separation at this height to be 28m. The proposed variation to this development standard ranges from 5.06m (18%) to 15m (54%). This is a greater separation and an improvement to the separation approved with the Stage 1 DA (DA-585/2019), where a 12m separation was approved for both the podium and tower elements.

For absolute clarity, it is noted that there is no variation to clause 7.4(2)(d) of the Liverpool LEP 2008, given that the podium elements between 25m and 45m in height are all separated by more than 12m from the mixed use civic building in Phase A of Liverpool Civic Place.

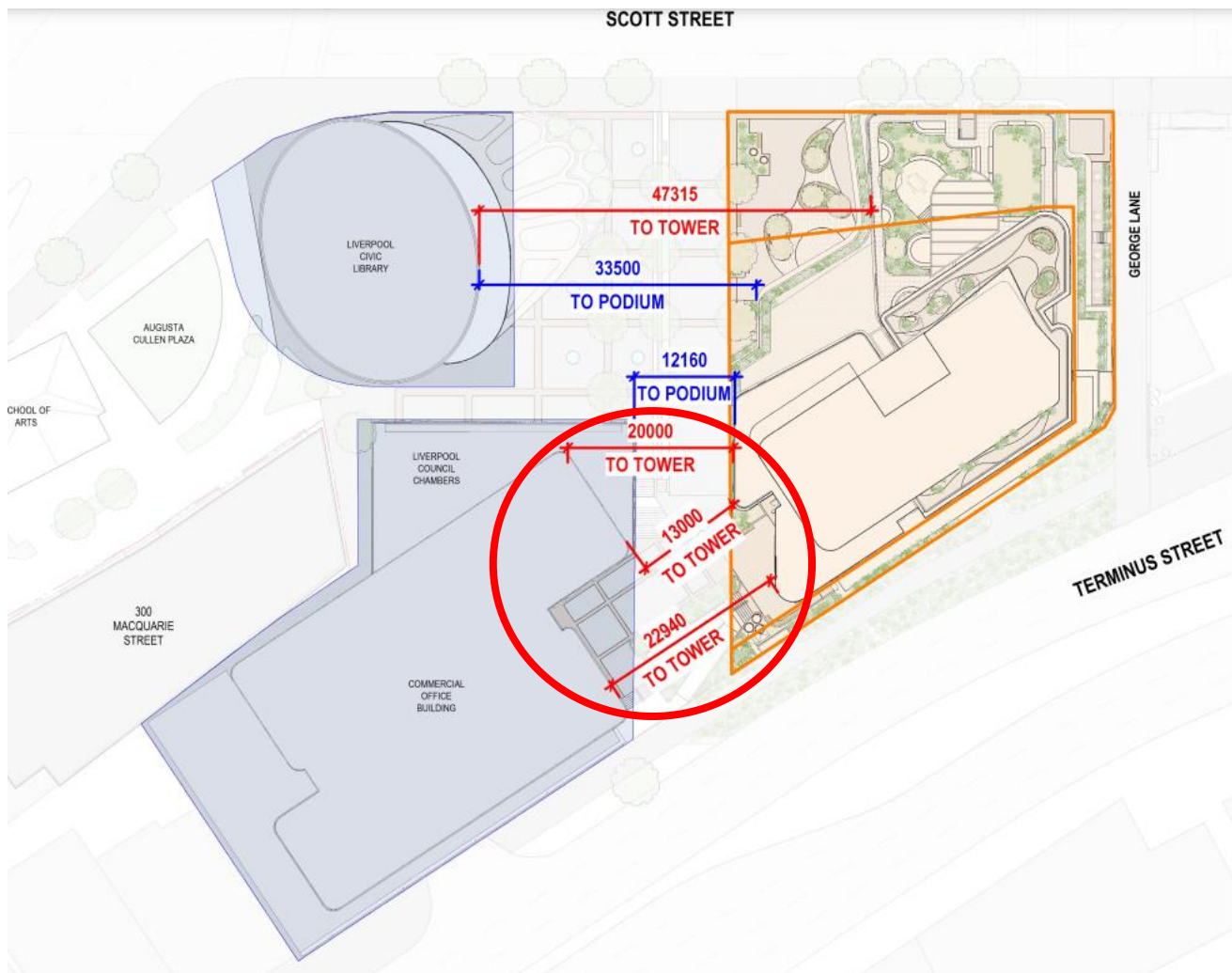


Figure 5 Visual representation of the proposed building separation variation circled in red

Source: Scott Carver (with additions by Ethos Urban)

5.0 Justification for the proposed variation

Clause 4.6(3) of the Liverpool LEP 2008 provides that:

4.6 Exceptions to development standards

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

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

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council [2007] NSW LEC 827;*
2. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
3. *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 (Initial Action);* and
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245 (Al Maha).*

Role of the consent authority

The role of the consent authority in considering this request for a clause 4.6 variation has been explained by the NSW Court of Appeal in *Initial Action*. This requires the consent authority being satisfied that the applicant's written request has adequately addressed the matters in clause 4.6(4)(a)(i).¹

The consent authority is required to form this opinion first before it considers the merits of the DA and it can only consider the merits of the DA if it forms the required satisfaction in relation to the matter. In particular, the consent authority needs to be satisfied that there are sufficient environmental planning grounds to grant consent and that the contravention of the standard is justified.

This document provides the basis for the consent authority to reach this level of satisfaction. The relevant matters contained in clause 4.6 of the Liverpool LEP 2008 with respect to the building separation development standard, are each addressed below, including with regard to the above decisions.

5.1 Compliance with the development standard is unreasonable or unnecessary in the circumstances

In *Wehbe*, Preston CJ of the NSW Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as 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 can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the Liverpool LEP 2008 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this Clause 4.6 Variation Request.

¹ Clause 4.6(4)(a)(i) has since been repealed. The note under clause 4.6(3) references the EP&A Regulation which requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in clause 4.6(3)(a) and (b).

The five methods outlined in *Wehbe* include:

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

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

5.2 The objectives of the standard are achieved notwithstanding non-compliance with the standard

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 6.1** of the EIS and the Architectural Design Report in Appendix G of the EIS.

5.2.1 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 variation) has been designed to facilitate highly visible and transparent public facilities within the centre of Liverpool Civic Place, while seamlessly integrating the proposal with the heritage significant 'Hoddle grid'. The proposal also delivers an urban marker development in this location.

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 6**. 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 proposed development. The separation distance between the proposed build-to-rent shop top housing building and the mixed use civic building contained within Phase A of Liverpool Civic Place, has been informed by the spatial characteristics of the service grid.

In this regard, **the proposed separation distance ranges from 12.16m to 12.22m at the podium levels (compliant with the Liverpool LEP 2008) and ranges from 13m to 22.94m at the tower levels, increasing from the general 12m separation approved with the Concept DA**, as illustrated in **Figure 7**. The proposed increase to the building separation between the build-to-rent shop top housing building and the mixed use civic building of Phase A allows for the development to seamlessly integrate with the urban fabric in an even stronger and more sympathetic manner, creating a superior visual appearance outcome for the site. Without the proposed variation, this superior visual appearance outcome involving a clean alignment of the buildings with the historic Liverpool 'Hoddle grid' would not be achievable.

(our emphasis)

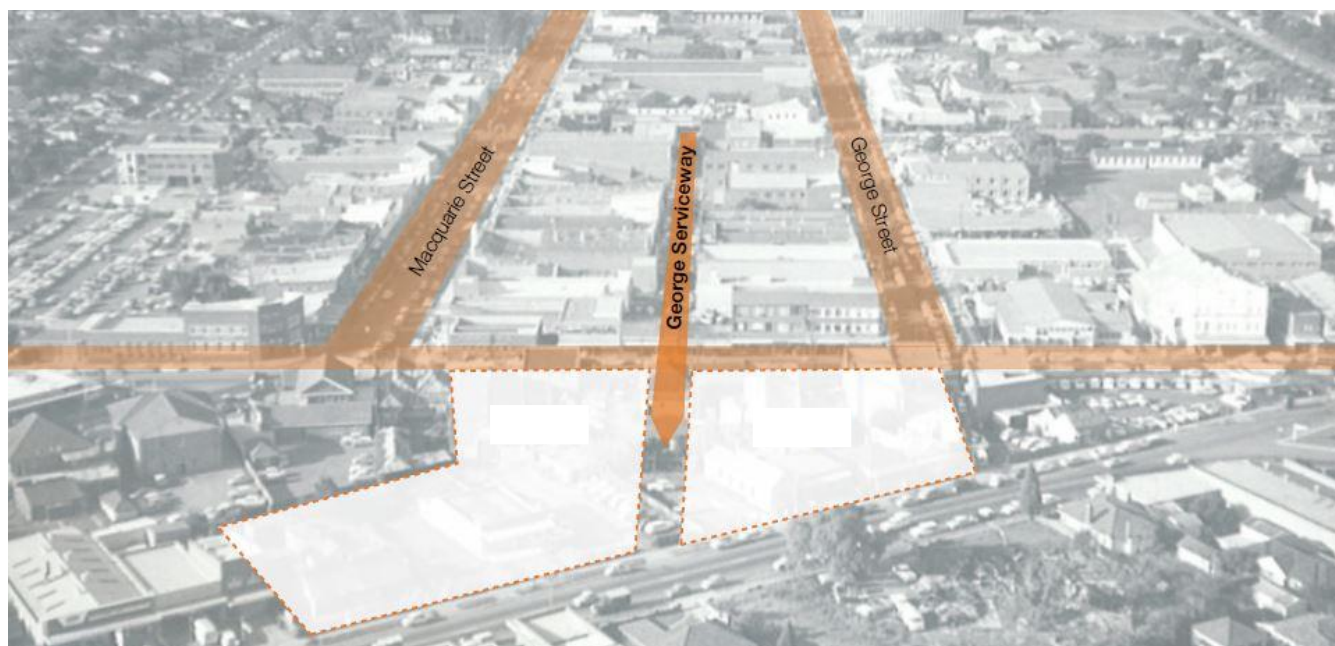


Figure 6 *Hoddle grid characteristic*

Source: FJC

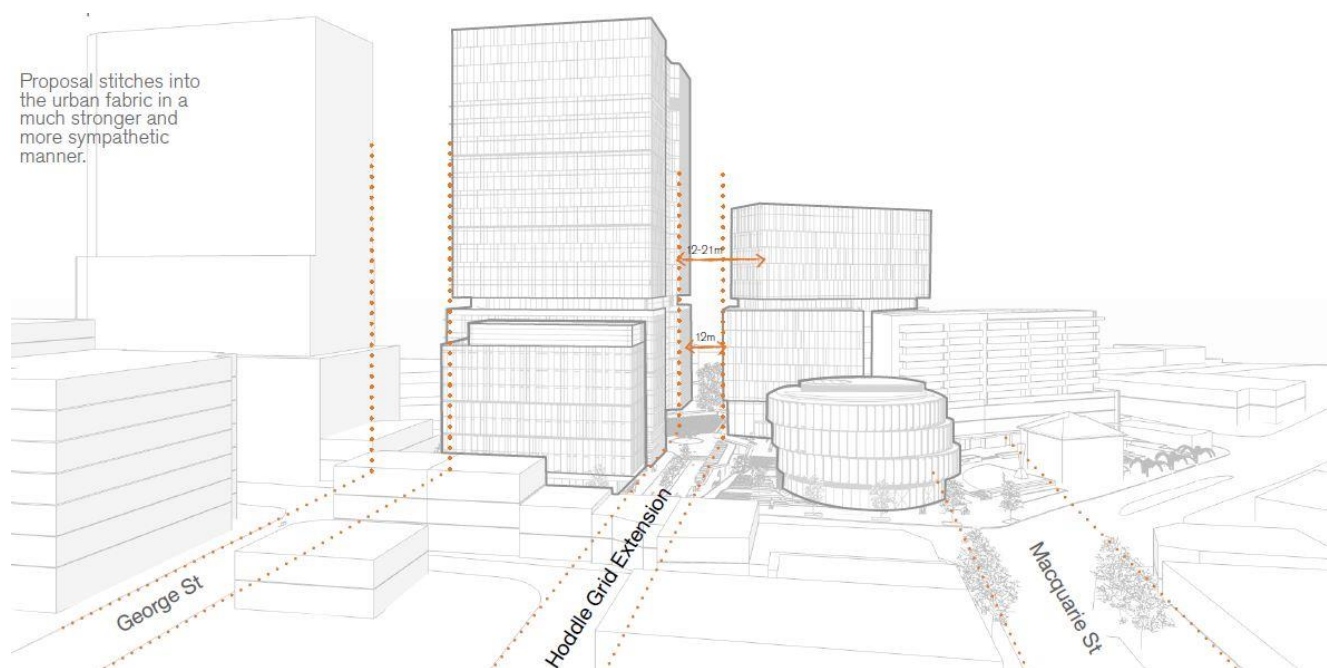


Figure 7 *Hoddle grid informed building separation*

Source: FJC

5.2.2 Privacy

The central variation divides the proposed build-to-rent shop top housing building from the mixed use civic building in Phase A of Liverpool Civic Place which contains public administration, commercial office, and childcare uses. The main privacy concern surrounds the residential apartments in the proposed building. The proposal has been carefully designed to maximise visual privacy through the configuration and planning of apartments which enables the primary orientation of the apartments to be oriented away from the mixed use civic building within Phase A of Liverpool Civic Place.

In order to address any potential privacy impacts from the secondary orientation of apartments within closer proximity to the mixed use civic building, the design of the build-to-rent shop top housing building incorporates blank walls and privacy treatment. The privacy treatment involves the incorporation of vertical louvred elements that provide directional view control which maintains access to primary views and daylight for residents while blocking views from neighbouring aspects into the building. An image of the proposed privacy treatment included in the façade of the build-to-rent shop top housing building is shown in **Figure 8** below.

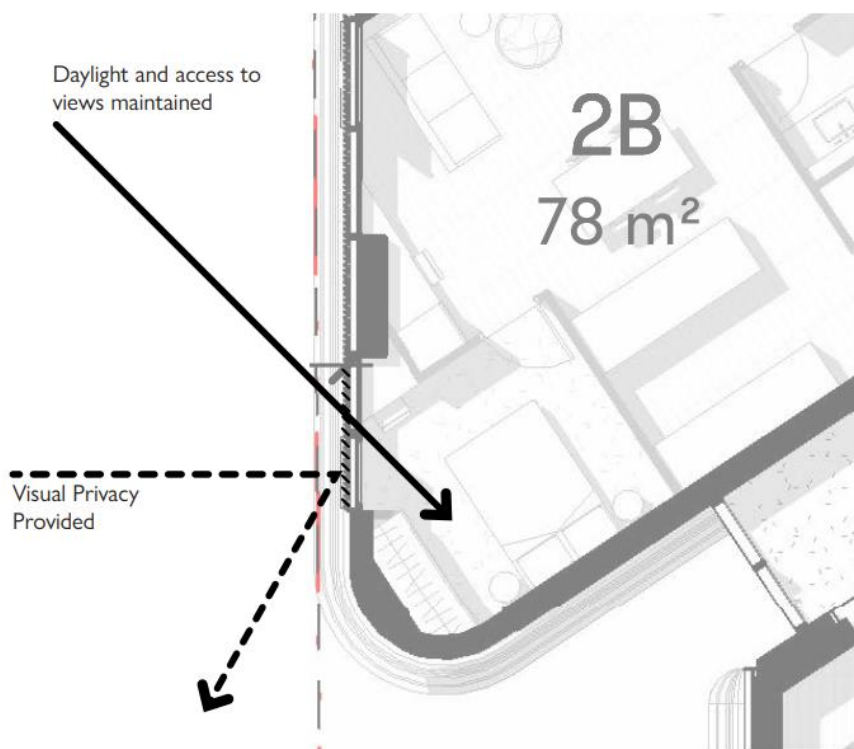


Figure 8 Diagram identifying screening providing privacy while maintaining daylight and access to views

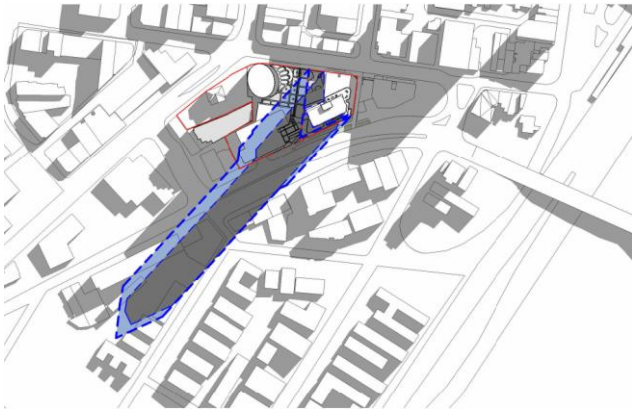
Source: Scott Carver

5.2.3 Solar access

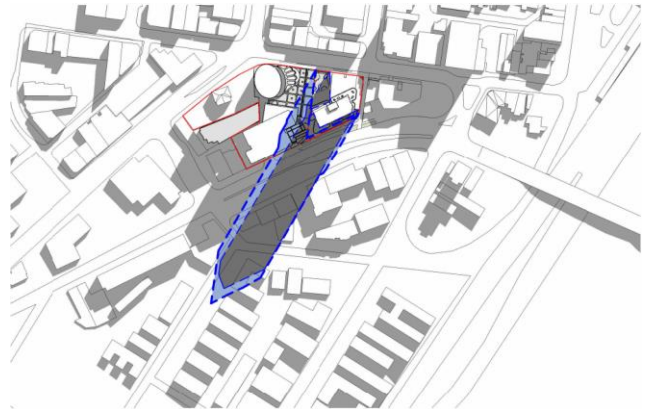
The proposed variations to the building separation development standard will not result in significant adverse impacts on solar access to the site or on surrounding sites. In support of this, Scott Carver has prepared a detailed shadow study (included in the Architectural Drawings at Appendix B of the EIS). For absolute clarity, the shadow diagrams are based on the buildings contained within the proposed development during the winter solstice, as illustrated at **Figure 9**, and include the buildings the subject of the approved Phase A DA. As such, this represents the worst-case scenario.

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 Liverpool Civic Place site. The shadow cast by the proposed development allows the central public domain area in Liverpool Civic Place, to the west of the Phase B building, to be provided with substantial solar access throughout the day. As can be seen on the shadow diagrams provided in **Figure 9**, 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. The tower form is placed to the south 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.

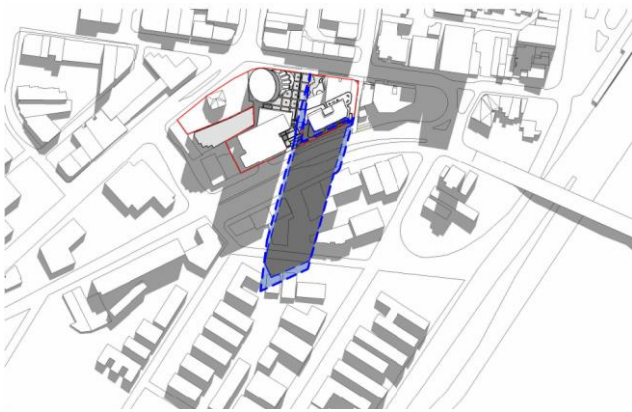
Notwithstanding the above, the proposed development will culminate in an improved outcome compared to the approved Concept DA (DA-585/2019), as the proposed Phase B build-to-rent building does not use part of the envelope that is approved. Moreover, the proposed central variation has been reduced compared to the approved Concept DA, as it provides an additional 0.16m of podium separation and at least an additional 1m tower separation from the approved Phase A mixed use civic building. As such, there is considerably less overshadowing to the surrounding precinct, with the blue shading in the below shadow diagrams representing the reduction in the extent of overshadowing caused by the proposed development (see [Figure 9](#)).



Overshadowing caused by the proposal at 9am



Overshadowing caused by the proposal at 10am



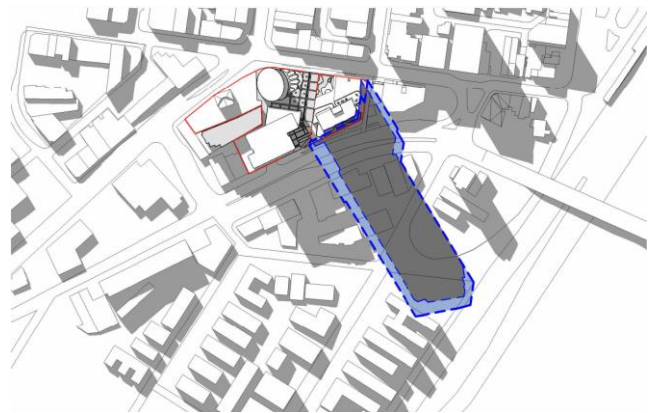
Overshadowing caused by the proposal at 11am



Overshadowing caused by the proposal at 12pm



Overshadowing caused by the proposal at 1pm



Overshadowing caused by the proposal at 2pm



Overshadowing caused by the proposal at 3pm

Figure 9 *Winter solstice shadow diagrams*

Source: Scott Carver

5.2.4 Wind impact

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 buildings and the impact on the surrounding pedestrian environment. In this regard, Windtech has prepared a Wind Impact Assessment which is provided in Appendix GG of the EIS. 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 even with the proposed variations, 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. The Wind Impact Assessment recommends for some areas to include mitigation measures to improve conditions, as follows:

- Lower ground level:
 - Retention of densely foliating evergreen trees capable of growing to a height of 5-8m along both sides of the west car ramp.
 - Inclusion of densely foliating evergreen trees capable of growing to a height of 5-8m in the open area along Scott Street.
 - Inclusion of 1.5m high intermittent dining screening located outside the retail food and beverage outlets.
- Upper ground level:
 - Inclusion of planter boxes containing densely foliating evergreen plantings capable of growing to a combined height of 1.8m in the outdoor communal area.
 - Inclusion of densely foliating evergreen trees capable of growing to a height of 5-8m along Terminus Street to the south of the outdoor communal area.
- Levels 1-8:
 - Inclusion of a full-height impermeable end screen on the western edge of the north-western corner balcony.
 - Inclusion of a 2m high impermeable end screen on the southern edge of the south-eastern corner balcony.
- Level 9:
 - Retention of planter boxes containing densely foliating evergreen plantings capable of growing to a combined height of 1.8m in the outdoor communal area.
 - Inclusion of a 1.8m high impermeable balustrade on the east and west aspects of the outdoor communal area.
 - Inclusion of a 2m high impermeable end screen on the southern edge of the south-eastern corner balcony.
- Levels 10-26:
 - Inclusion of a 2m high impermeable end screen on the southern edge of the south-eastern corner balcony.
 - Inclusion of a 2m high impermeable end screen on a portion of the southern and western edges of the south-western corner balcony.
- Levels 27:
 - Retention of planter boxes containing densely foliating evergreen plantings capable of growing to a combined height of 1.5m in the outdoor communal area.
 - Inclusion of a 1.8m high impermeable balustrade on the north and south aspects of the outdoor communal areas.

Summary

The objectives of the development standard are achieved notwithstanding the variations, given the following reasons:

- The separation distance between the build-to-rent shop top housing building and the mixed use civic building contained in Phase A of Liverpool Civic Place has been informed by the spatial characteristics of the George Street service grid. This is a visual gesture to the heritage significant 'Hoddle grid'. Moreover, the proposed development involves an increase to the minimum separation approved as part of the Concept DA (DA-585/2019), from 12m to 13m (1m increase).

- The proposed design of the build-to-rent shop top housing building involves careful orientation and planning of apartments to maximise visual privacy, and also includes blank walls, and privacy treatment in the form of vertical louvred elements that provided directional view control, preventing views into the building, but allowing residents to see outside the building, and to gain daylight and solar access.
- 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, while also allowing the primary open space on Scott / Macquarie Streets to receive over 5 hours of sun, from 11am until the afternoon. The proposal reduces the bulk and scale of the proposed development by minimising the height of the commercial tower by 5.2m and not using part of the approved envelope, therefore resulting in considerably less overshadowing to the building envelopes approved under the Concept DA (DA-585/2019).
- 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.

5.3 Sufficient environmental planning grounds to justify the contravention of 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]).

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.

5.3.1 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 location as the central variation, 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 a variation greater than the central variation proposed with this request (in the same location) satisfies 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 central variation. The central variation the subject of this request is of a lesser magnitude given the proposed buildings do not occupy the full extent of the approved building envelopes.

5.3.2 Site characteristics

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

Central variation – visual screening and orientation

The main issue arising from the central variation are potential privacy impacts on the apartments contained in the build-to-rent shop top housing building. However, these are effectively mitigated through the careful orientation of the proposed building and the planning of apartments. The proposed building’s interface with the mixed use civic building has also been designed to allow for appropriate visual privacy outcomes through the incorporation of suitable privacy treatment in the façade.

Specifically, the proposal has been designed to ensure that the primary orientation of the apartments at the western frontage of the development are oriented away from the mixed use civic building within Phase A of Liverpool Civic Place. Additionally, to achieve privacy at the interface with the mixed use civic building for the secondary orientations of apartments, the proposal includes blank walls at the component of the building that has a 13m separation distance from the mixed use civic building, as shown in the south-west corner of the building’s façade at **Figure 8** above.

Further, the proposal includes a vertical louvred façade element at other parts of the western façade, where up to 20m of separation is achieved. This façade element allows for daylight and access to views outside the building to be maintained while preventing views into the proposed building (refer to **Figure 8**). This achieves appropriate visual privacy for the apartments within the proposed building. It is also noted that the mixed use civic building does not contain any residential uses and therefore in the absence of sensitivities with the non-residential uses at the affected levels of the mixed use civic building, the visual privacy treatment adopted in the proposed building is considered appropriate. Moreover, the colour and materiality of the façade treatment harmoniously integrates with the broader Liverpool Civic Place precinct and the proposed development, as detailed in Sections 3.6 and 6.1 of the Environmental Impact Statement. Accordingly, these measures ensure that appropriate privacy is maintained notwithstanding to the variation to the building separation requirement.

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 5.2.1**. The proposed building separation variation is a result of creating a building separation between Phase A and Phase B and has been informed by the spatial characteristics of the George Street service grid. This is considered a strong urban design move which is unique to the site, and will stitch the proposed development to its local urban context and in conjunction with the visual screening and orientation argument above, is a sufficient environmental planning ground to justify the central variation.

5.3.3 Consistency with Objects of the EP&A Act

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 consistency of the proposed development with 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 additional housing supply, addressing the anticipated undersupply of 7,774 dwellings in the Liverpool LGA by 2036 and the lack of apartment dwellings, through the provision of 320 apartments.</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 to the fully completed Liverpool Civic Place mixed use development 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 ongoing 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 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 variation is not in a location that will have a negative impact on environmental and social considerations and it will support the economic health of the Liverpool city centre.</p>
(c) to promote the orderly and economic use and development of land	<p>The site is significantly underutilised and is occupied by low scale commercial buildings and unutilised hardstand area, all of which are 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.</p>
(d) to promote the delivery and maintenance of affordable housing	<p>This object is not relevant to the proposed development.</p>
(e) to protect the environment, including the conservation of threatened and other species of native	<p>The proposed development will have no impact on threatened species or ecological communities.</p>

Object	Comment
animals and plants, ecological communities and their habitats	
(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 in Figure 6 and Figure 7 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 proposed development. As such, the proposed building separation variation is a direct response to the site's heritage context and seeks to allow for a clear alignment with the historic Liverpool 'Hoddle Grid'.
(g) to promote good design and amenity of the built environment	The proposed development has been designed by renowned architects Scott Carver and has been subject to reviews from the State Design Review 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 5.2 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 have no impact on community participation processes.

6.0 Conclusion

The assessment above demonstrates that compliance with the building separation in Liverpool city centre development standard contained in clause 7.4 of the Liverpool LEP is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the building separation in Liverpool city centre development standard:

- The proposed development achieves the objectives of clause 7.4 of the Liverpool LEP:
 - The separation distance between the proposed build-to-rent shop top housing building and the mixed use civic building contained in Phase A of Liverpool Civic Place has been informed by the spatial characteristics of the George Street service grid. This is a visual gesture to the heritage significant 'Hoddle grid', which achieves a positive visual appearance. Moreover, the colour and materiality of the western façade that interfaces with the mixed use civic building harmoniously integrates with the broader Liverpool Civic Place precinct which further improves the visual appearance outcome.
 - The proposed design of the build-to-rent shop top housing building involves careful orientation and planning of apartments to maximise visual privacy, and also includes blank walls, and privacy treatment in the form of vertical louvred elements that provide directional view control, preventing views into the building, but allowing residents to see outside the building, and to gain daylight and solar access.
- The proposed development demonstrates that there are sufficient environmental planning grounds to vary the control in this instance because:
 - The proposed design of the building has been carefully designed to maximise visual privacy of apartments by ensuring that the primary orientation of the apartments at the western frontage of the development are oriented away from the mixed use civic building Liverpool Civic Place.
 - Privacy treatment in the form of vertical louvred façade elements providing directional view control ensure adequate privacy is achieved. Blank walls have also been included in parts of the design to eliminate visual privacy concerns. The colour and materiality of the façade treatment harmoniously integrates with the broader Liverpool Civic Place precinct and the proposed development.
 - The proposed building separation variation is informed by the spatial characteristics of the heritage significant 'Hoddle grid', and is a strong urban design move which will stitch the site into its local context, while providing additional building separation compared to the approved Concept DA (DA-585/2019).

Therefore, the consent authority can be satisfied that there are sufficient grounds for the variation to the building separation in Liverpool city centre development standard as proposed in accordance with the flexibility allowed under clause 4.6 of the Liverpool LEP.