

Clause 8.6 Building separation within Zone B3 Commercial Core or Zone B4 Mixed Use

- (1) *The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.*
- (2) *Buildings on land within Zone B3 Commercial Core or B4 Mixed Use must be erected so that:*
- (a) there is no separation between neighbouring buildings up to the street frontage height of the relevant building or up to 24 metres above ground level whichever is the lesser, and*
 - (b) there is a distance of at least 12 metres from any other building above the street frontage height and less than 45 metres above ground level, and*
 - (c) there is a distance of at least 28 metres from any other building at 45 metres or higher above ground level.*
- (3) *Despite subclause (2), if a building contains a dwelling, all habitable parts of the dwelling including any balcony must not be less than:*
- (a) 20 metres from any habitable part of a dwelling contained in any other building, and*
 - (b) 16 metres from any other part of any other building.*
- (4) *For the purposes of this clause, a separate tower or other raised part of the same building is taken to be a separate building.*
- (5) *In this clause:*
street frontage height means the height of that part of a building that is built to the street alignment.

Comment

Given the complexity of the controls contained in clause 8.6, the irregular nature of the site's dimensions, and the corresponding irregular shape to the footprint of the proposed building provided over is a summary of the proposal's compliance with the LEP setback provisions. The commentary provided in relation to each sub-clause of Clause 8.6 relates to the setback dimensions measured both in 'plan-view' and 'line of sight' (section view) and considers both the existing buildings and future building envelopes to those sites adjacent to 3 Rawson Street.

The principal area of non-compliance with the LEP setback controls relate to the southern elevation of the tower element of the building. In addition to the summary table below provided on the following pages is a justification for the proposed setback non-compliances against the provisions of LEP Clause 4.6.

Summary of Proposal's compliance with Clause 8.6:

Sub-clause	Setback Requirement	Building / Land Use Element	Elevation	Compliance
2(a)	Zero to street frontage height	Podium	North	Yes
			East	Yes
			West	Yes
2(b)	12m to another building	Tower to 45m height	North	Yes
			South	No – Minor non-compliance in plan-view with existing building to 292 Crown Street. Non-compliance with plan-view to future building envelopes to 284, 290 and 292 Crown Street. Compliant as line of sight measurement (only) to existing and future building envelopes.
			East	Yes
			West	Yes
2(c)	28m to another building	Tower beyond 45m height	North	Yes
			South	Yes
			East	Yes
			West	Yes
3(a)	20m	Residential Balcony to Habitable Room (includes consideration of line of sight measurements for privacy issues)	North	Yes
			South	Yes
			East	Yes
			West	Yes – When measured in line of sight (only) to existing buildings. Non-compliant in plan-view to existing buildings. Fully compliant when measured in plan-view or line of sight to future building envelopes.
3(b)	16m	Residential Balcony to Non-Residential (includes consideration of line of sight measurements for privacy issues)	North	Yes
			South	No – Non-compliance in plan-view to existing building to 292 Crown Street and future building envelopes to 284, 290 and 292 Crown Street. Minor non-compliance (less than 1m) with line of sight measurement to future building envelope to 284 Crown Street, only.
			East	Yes
			West	Yes – When measured in line of sight (only) to existing buildings. Fully compliant when measured in plan-view or line of sight to future building envelopes.

Marcus R Brooks
Town Planning Consultant

Application of Clause 4.6:

Provided below is an assessment of the proposed contraventions of the Clause 8.6 development standards against the provisions of Clause 4.6 of the LEP.

Clause 4.6 Exceptions to development standards states (in part):

(1) The objectives of this clause are:

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

Comment

The building envelope proposed for this development will represent a net improvement in urban design quality outcomes when compared to the application of a 'setback compliant' scheme. The justification below is intended to clearly demonstrate that the proposed building envelope will achieve a better outcome for and from the development should Council consent to allowing flexibility in its application of Clause 8.6 this particular circumstance.

- (2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment

This application seeks consent from Council to contravene the development standards imposed in Clause 8.6 of the LEP, to the extent of the non-compliances with the building separation provisions outlined in the summary table, above. This request does not apply to any development standard that is expressly excluded from the operation of this clause.

- (3) 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 of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment

It is the position of the Applicant that compliance with the development standards for building separation as prescribed in Clause 8.6 of the LEP are unnecessary in this particular circumstance.

Marcus R Brooks
Town Planning Consultant

The Applicant bases this position on the submission that strict application of the building separation provisions will not result in a higher quality of development beyond that which may be achieved under the current development proposal. In fact it is submitted that compliance with the building setback requirements will result in a lesser development in terms of internal residential amenity, potential for view sharing from neighbouring sites (particularly to the north), and the quality of the architectural relationship of the tower and podium elements of the building.

Site Analysis

Council's attention is drawn to the minutes of the Design Review Panel meeting held on 29 April 2011 when a (now superseded) version of the proposal was considered. The design under consideration provided a largely setback-compliant scheme, particularly in relation to the rear setback requirements. In their minutes the Panel noted:

Rather than responding to a detail analysis of the immediate context of the site... the position of tower and the form of the building appears to be a literal response to the development (controls). Whilst the development controls are based on sound principles they do not allow the proposal to positively respond to the specific contextual constraints and opportunities of the site, to provide the best design outcome for the site.

A detailed contextual analysis should be undertaken to inform and refine the proposed building form. The study should analyse solar, privacy and view impacts of the proposal on surrounding existing and future neighbouring buildings to help develop a building form that is more responsive to its context.

Included in the submitted architectural set is an extensive site analysis that includes plans, elevations, sections and solar access modeling information in relation to the proposed development. This site analysis compares the proposal with an 'LEP compliant' building envelope and clearly demonstrates:

- the relatively minor extent of 'effective' non-compliance of the proposed building separation distances;
- the discernable improvement to the internal residential amenity and the negligible impact upon the public realm;
- the equally discernable improvement to the potential for view sharing from other sites (particularly those large development parcels to the northern side of Rawson Street); and
- the improved urban design quality in the relationship of the tower and podium elements.

'Effective' Extent of Non-Compliance

Given one of the principal objectives under Clause 8.6 is to ensure privacy for existing and future residents it is reasonable to assume the distances provided in Clause 8.6(3) are intended to be read as measurements of the line of sight distances from any single habitable balcony of the proposed development to the nearest, relevant part of a neighbouring building. The Applicant submits that this approach, as opposed to a 'plan-view' interpretation of the development standards, is both a relevant and reasonable interpretation given the RLs to the lowest residential levels of the proposed tower

Marcus R Brooks
Town Planning Consultant

where line of sight to adjoining building is possible are significantly higher than the RLs of the roof structures to existing buildings.

As an example, the RL to the lowest residential floor level (being Level 04) is approximately 5.5 metres higher than the roof height to the residential flat buildings to the west of the site. This, combined with the extent of podium roof to the proposed development, will mean that residents to units at Level 04, for example, will have no line of sight whatsoever to the eastern elevation of existing, adjacent residential flat building.

Assuming a 'line of sight' approach is applied to Clause 8.6 the overwhelming majority of the proposal's setbacks achieve the required building separation distances.

Reference is made to the submitted architectural drawings DA 01.07, 08 and 09 that provide a series of sections that indicate the effective extent of the building separation proposed to the areas of narrowest setback from the property boundary. These section drawings clearly indicate the effective extent of building separation as a result of the varying RLs. Council's attention is drawn to the line of sight setback indicated as dimension (6) in drawing DA 01.07 – Section 01. This dimension indicates a 15.6m line of sight distance between the residential balcony space and the nearest point of any other (potential) building to the south of the site. It is important to note that this is the only point to the southern elevation of the site where the proposed building separation does not comply with a 'line of sight' interpretation of the building separation development standards contained in Clause 8.6. The extent of this non-compliance is limited to the potential future building envelope to 284 Crown Street, only and is less than 0.5m in distance.

Conversely, drawing DA 01.08 – Section 02 indicates the relationship of the proposal to 292 Crown Street. As can be seen in dimensions (11) and (12) the proposal achieves the effective minimum building separation requirement of 16m for both existing and potential buildings when measured from the shortest line of sight. Moreover, it exceeds the 20m setback to potential residential development associated with the future building envelope to 292 Crown Street.

In terms of the building separation to the western elevation drawing DA01.09 – Section 03 indicates the proposal's compliance with sub-clauses 3(a) and (b). It is evident that the line of sight dimensions shown as numbers (18) and (19) both exceed the minimum requirements.

Building separation distances to the eastern and northern elevations are fully compliant with Clause 8.6.

Finally, it should be noted the 'jagged' nature of the southern property boundary presents particular design challenges in that full compliance with the rear setback provision would result in a lesser quality of residential tower, as acknowledged by the Design Review Panel in their 29 April 2011 minutes. Moreover, given the fragmented nature of the neighbouring allotments fronting Crown Street it is highly unlikely that a 'full block' tower development can occur on these sites.

Residential Amenity

The Panel's recommendations continue with:

The form of the tower is also controlled by council's set back controls. The resultant tower plan is a narrow, twisting form that is difficult to plan without negative impacts on internal amenity. It is therefore questioned whether this form provides optimum internal amenity for residents. Potential to further develop and refine the tower form should be explored as part of the contextual analysis site.

The refined tower form presented in this application achieves a more efficient and 'rectangular' floorplate design than that which could be achieved under a fully compliant scheme. The proposal does not include the lengthy, narrow eastern floorplate element that would exist under a different scheme. This enables a more compact and efficient floor layout that achieves a higher level of SEPP 65 compliance in terms of privacy between units (most notably between adjacent balcony spaces).

Moreover, the proposed design will have a negligible impact upon pedestrian amenity at the street level to both Crown Street and Rawson Street in terms of wind mitigation and daylight access. In terms of wind mitigation there is no potential 'tunneling' effect given development to the east or south of the site is limited to a building height of 32m. In terms of daylight access the site has a northern frontage so therefore has no impact to Rawson Street; while the impact to Crown Street (to the south) will be negligible given the extent of shadow impacts already experienced as a result of existing development to the northern side of that street frontage. This is reflected in the submitted sun shadow modeling diagrams included as part of the architectural package accompanying this development application.

View Sharing

Providing greater side setbacks to the east and west at the expense of the rear setback enables a narrowing of the width of the tower. This design approach has been adopted for the effect of enhancing the view sharing potential with properties to the north of the site. This is illustrated in architectural drawing DA 01.06 where it is evident that the extent of view corridors through the site increases as a result of the proposed tower footprint, particularly to the eastern third of the site, when compared with a more compliant scheme. This enhancement of view sharing demonstrates clear compliance with Council's design objectives for high rise development in the Wollongong City Centre as outlined in the Wollongong DCP.

Relationship of Tower and Podium

It is submitted that the proposal offers a better urban design relationship between the tower and podium elements of the building than would be achievable under a compliant scheme. The Applicant notes the Design Review Panel's recommendation in response to the earlier 'setback compliant' scheme:

As the tower is positioned only to comply with setback controls, it appears to have a poor relationship with the podium below. Setback from its street frontage, the tower appears lost against its comparatively bulky podium. This relationship could be

Marcus R Brooks
Town Planning Consultant

improved by strengthening the visual and physical connection between the tower and podium.

The proposal achieves the Panel's recommendation by angling the tower footprint in a general northeast by southwest axis and moving the tower footprint to less than two metres from the street setback (at the tower's northeastern corner). The proposal now offers a front setback from the property boundary of 1.45m to the nearest residential balcony and 3.5m to the glass line associated with those units to the northeastern corner of the tower. As can be seen in the submitted floor plans the actual extent of encroachment within the front setback zone is minor. Furthermore, the balcony treatments to the northern elevation of the tower are replicated to Level 01 of the podium as indicated in the north elevation drawing. The combined effect on the design enhances the relationship of the tower to the podium level while maintaining compliance with Council's front setback objective of adding articulation to the urban form of the building's northern elevation.

Given these design considerations it is submitted by the Applicant that compliance with the development standards for building separation as prescribed in Clause 8.6 of the LEP are unnecessary in this particular circumstance.

(4) Consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (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, and*
- (b) the concurrence of the Director-General has been obtained.*

Comment

Noting the design merits described above, the proposal's compliance with the objectives of Clause 8.6, as well as the proposal's compliance with the objectives of the B3 zone it is submitted that the proposal is clearly in the public interest.

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

Comment

It is again submitted that compliance with the provisions of this plan is unnecessary given the particular circumstances of this application. It is the Applicant's understanding that the proposal will be referred to the NSW Department of Planning for consideration.

Marcus R Brooks
Town Planning Consultant