

Request to vary building separation development standard under Clause 4.6 of LLEP2008

1 Building separation development standard under Clause 7.4 of LLEP2008

The subject site falls within the Liverpool City Centre and Clause 7.4 Building Separation in the LLEP 2008 applies to site which reads 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.*

The subject site is zoned R4 High Density Residential and the proposal will vary from Clause 7.4 and subclauses 2(a) and (B). The proposal will also result in the following minor variations with the building separation standard (refer to figure 1 for further detail):

Internal in between Buildings A and B:

- 5th storey (Level 4) there is a variation of 0.012m (proposed setback is 8.988m); and
- 8th -10th storey (Levels 7, 8 and 9) there is a variation of 0.265m (proposed setback is 11.735m).

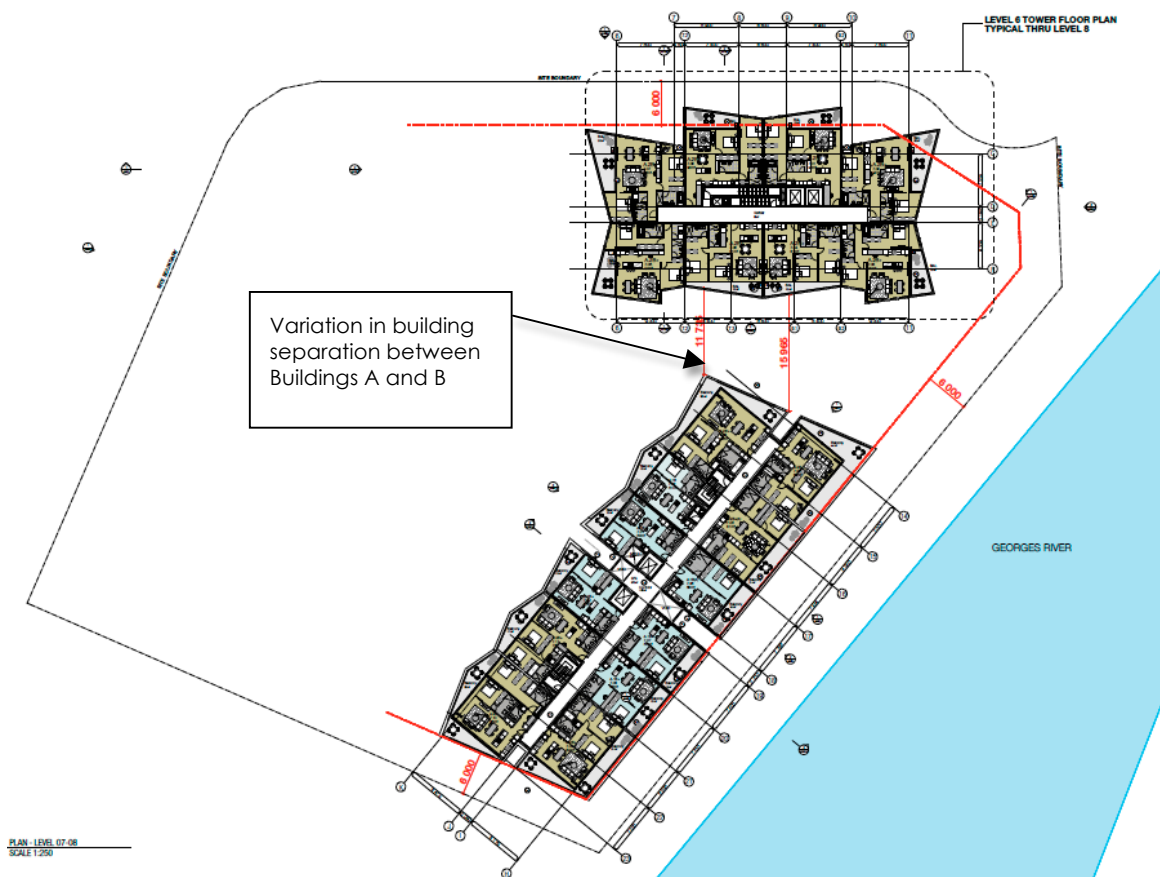


Figure 1 – Floor plan of Levels 7 and 8, illustrating the areas of non-compliance
Source: Woods Bagot

It is noted that for the purposes of separation distances between neighbouring properties the distance has been halved as the adjoining neighbor is expected to be setback the remaining half. In this regard the southern elevation of the property is sufficiently separated and complies with Clause 7.4 of the LLEP 2008. To the north of the site is Atkinson Street which is some 17-18m in width and provides more than the required separation distances in Clause 7.4 of the LLEP 2008.

2 Clause 4.6 of LLEP 2008

Clause 4.6 of the LLEP 2008 enables an exception to the development standard upon consideration of a written request from the applicant justifying the contravention in the terms stated below:

Clause 4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development 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.

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

3 Request to vary under Clause 4.6

The matters specified in Clause 4.6 of Liverpool LEP 2008 that are required to be addressed in the proposed contravention to the building separation distances are addressed below.

There are sufficient environmental planning grounds

There are sufficient environmental grounds for the variation from the building separation distances which are detailed below:

- The non-compliances between Buildings A and B are considered to be minor with the 5th storey varying by 0.13% and the 8th-10th storeys varying by 2.2%;
- The units are offset and not orientated directly onto each other, with Building A oriented towards the south and Building B orientated to look towards the Mills Building (north-west);
- The variation from the building separation control can be attributed to the articulation in the building envelope which creates an interesting façade when viewed internally and from more distant view points. The variation with the building separation only occurs at one point where the built form is angled while the vast majority of the development complies;
- The separation distances between Buildings A and B will allow for view corridors from the internal courtyard to Georges River;
- The site is heavily constrained by the existing heritage listed Mill Building, which is required to be retained for heritage conservation and the proposed alignment



and orientation of the two building envelopes has been designed around the heritage item and the proposed courtyard to the front;

- The variation from the building separation controls will not significantly impact upon the solar access to Building B (which is located on the south of the site); and
- The minor variation only occurs within the site while the separation distances with adjoining properties are considered to be sufficient.

The development will be in the public interest because it is consistent with the objective and requirements of the standard and objectives for development in the zone

Objective of the building separation standard

The objective of Clause 7.4 is as follows:

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

The proposed development is consistent with the objective of the building separation standard:

- The site layout is constrained by the retention of the heritage listed Mills Building and the proposed built form has been pushed towards Georges River. The building separation between Buildings A and B maintains view corridors from the heritage item to the Georges River. Furthermore, the minor variation with the building separation control will not impact upon the visual appearance of the buildings while the angled articulation to the façade adds visual interest to the development;
- The units will not look directly into each other and impact upon visual or acoustic privacy. Building A is oriented to the south and Building B is generally orientated to look towards the Mills Building (north-west); and
- The variation from the building separation controls will not significantly impact upon the solar access to Building B.

Objectives of the zone

The objectives of the R4 High Density Residential Zone are as follows:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a high concentration of housing with good access to transport, services and facilities.*
- *To minimise the fragmentation of land that would prevent the achievement of high density residential development.*

The proposal is consistent with the objectives of the R4 High Density Residential zone for the following reasons:

- The proposed development will make a substantial contribution towards the housing needs of the community by providing 250 new residential dwellings within a high density residential environment with significant communal infrastructure on site;
- The development provides a variety of housing types including 1, 2 and 3 bedroom units and townhouse style dwellings;



- The development of new residential dwellings will encourage the provision of other land uses such as local shops and retail to provide facilities and services to meet the day-to-day needs of residents;
- The adaptive reuse of the Heritage Mills Building will provide for local non-residential uses to support and revitalise the surrounding area and Georges River Precinct;
- The proposed development has good access to transport including Liverpool and Casula Train stations and local pedestrian, cycling and bus routes; and
- The proposed development provides a contemporary architectural design solution for the site, whilst recognizing the heritage features, the net result being a development that achieves a high level of residential amenity.

Any matters of significance for State or regional environmental planning

The contravention of the height standard does not raise any matter of State or regional planning significance.

The public benefit of maintaining the building separation standard

In the circumstances, there is no significant benefit in maintaining the building separation standard as the contravention facilitates the following public benefits:

- The proposed layout retains the Mills Building which is important to the heritage conservation of the locality and creates a public plaza for community interaction, whilst connecting the site to the Georges River;
- The proposal will maintain important view corridors from the heritage item to Georges River;
- The development will comply with separation distances with surrounding neighbours while the variation only impacts upon the internal arrangement of the site, which is more readily able to be managed through architectural design, i.e. placement of windows, balconies and façade treatments;
- The proposal will not impact upon the solar access or visual privacy of surrounding neighbours or internally; and
- The articulated façade will create visual interest to the locality.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

- There are sufficient environmental planning grounds to justify the contravention to the building separation standard as demonstrated;
- The proposed development is nevertheless consistent with the objective the building separation standard and R4 High Density Residential Zone as described above;
- The contravention of the building separation standard does not raise any matter of State or regional planning significance; and
- There is no public benefit in maintaining the standard in the circumstances of the case as explained above.

Conclusion to exception to building separation standard

This written request for an exception to the building separation standard under Clause 4.6 of the Liverpool LEP 2008 justifies the contravention to the development standard. The request demonstrates that the proposal provides a significantly better planning outcome with no significant adverse environmental impacts, and therefore the proposed variation to the building separation development standard meets the requirements of Clause 4.6 of the LEP2008.

