

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

1 Clause 4.6 Exceptions to Development Standards

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

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.

2 The Development Standard to be varied

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.

3 Extent of the variation to the development standard

The development standard for building separation under Clause 7.4 is split into three 'conditions' of building height; between 12m and 25m height, between 25m and 35m height, and above 35m in height. The proposed development requires a variation only to:

- Between the tower currently under construction at 20 Shepherd and the proposed tower at 26 Shepherd Street. 12m is required between towers at a height of between 25m and 35m, whereas a minimum 11.314m has been proposed. As 20 Shepherd Street is capped at 9 storeys, this effects only 2 storeys of habitable floors (Levels 8 and 9); and
- Between the proposed tower at 26 Shepherd Street and the proposed extension to Building C1 at 28 Shepherd Street. 18m is required between towers above 35m in height, whereas 12.6m has been proposed. This effects 4 storeys of habitable floors (Levels 10 – 13 inclusive).

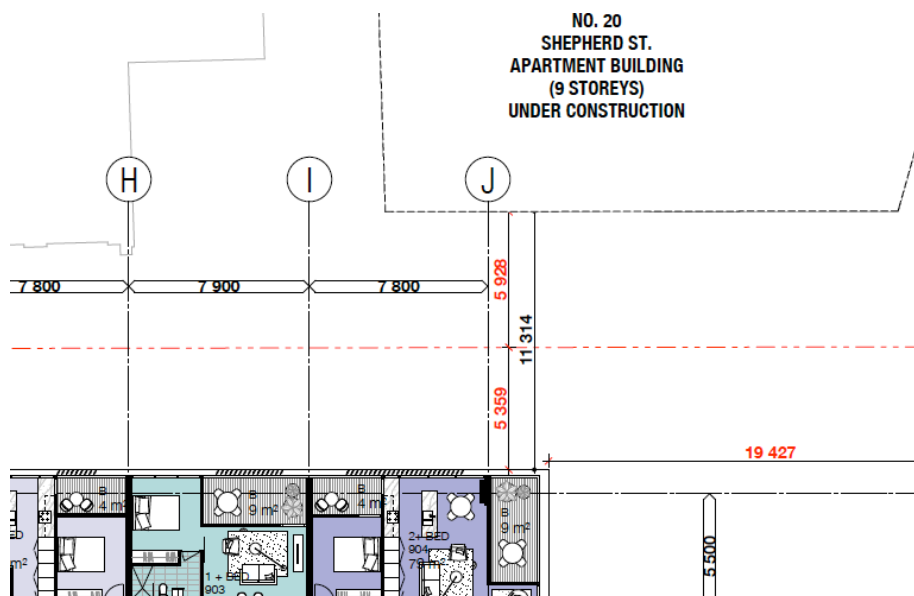


Figure 1 – 11.314m Building Separation between 20 and 26 Shepherd Street on Level 9

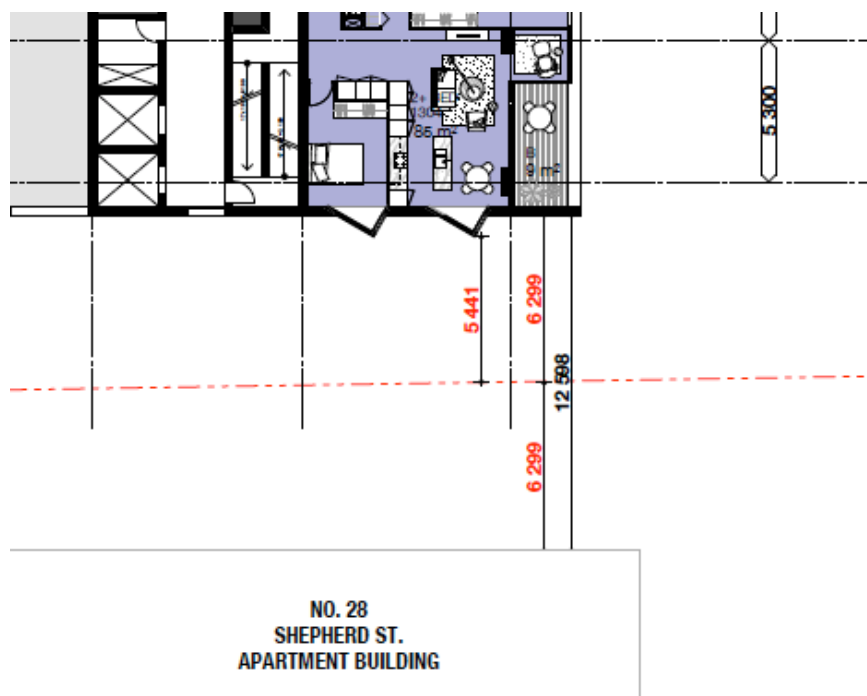


Figure 2 – 12.6m Building Separation between 26 and 28 Shepherd Street on Level 13

4 Objective of the 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.'

5 Objectives of the Zone

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

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

6 Assessment

Clause 4.6(3)(a) - Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case

Compliance with the standard is unreasonable and unnecessary in the circumstances given:

- The proposed non-compliance is associated only with a small portion of the development as a whole
- The development of the precinct as a whole has been considered from an urban design perspective, supported by Council under the Shepherd Street Planning Proposal. This development application is consistent with the urban design analysis and proposed building footprints.
- There is no significant benefit in maintaining the building separation standard as the contravention facilitates the following public benefits:
 - The proposed building locations responds to the siting of the nearby heritage building on 20 Shepherd Street which is important to the heritage conservation of the locality;
 - The proposal will maintain important view corridors from the heritage item to Georges River;
 - The variation will not reduce amenity for the subject site or adjoining sites;
 - The proposal is a high quality architectural design which displays design excellence; and
 - The variation does not inhibit the proposal's compliance with the objectives of the standard or the zone, as outlined further within this document.

Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

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

- The non-compliances are minor, and occurs in only two conditions of the proposal being:
 - Between the proposed tower at 26 Shepherd Street and the tower under construction at 20 Shepherd Street for the height between 25m and 35m. A separation of 11.325m is provided as opposed to the 12m required. This is a variation of only 5.6%; and
 - Between proposed Building C1 at 28 Shepherd Street and the tower at 26 Shepherd Street above 35m. 12.6m separation is proposed as opposed to the

18m required under Clause 7.4. Whilst this is larger, this is only applicable to 4 habitable floors (above Level 10), as the tower at 26 Shepherd Street is capped at 14 storeys.

- The proposal locates the majority of height and bulk of the 26 Shepherd Street tower towards the rear of the site. This ensures the protection of the heritage building at 20 Shepherd Street from any significant impacts, as only a 2 storey tower element is proposed at the street frontage. The heritage Woollen Mills building is being restored and reused as part of the precinct redevelopment, and it is considered a significantly better outcome to locate the majority of bulk away from this sensitive building.

This however necessitates the minor variations to building separation, as sufficient setbacks cannot be reasonably achieved whilst delivering appropriate apartment layouts given the width of the site in this location.

- Unit windows are offset at 26 Shepherd Street to ensure there are no visual privacy impacts; and
- The separation distances between the proposed towers will allow for view corridors from the internal courtyard to Georges River.

Clause 4.6(4)(a)(ii) - Is the proposed development 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 objectives of the standard

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

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

- The minor variation with the building separation control will not impact upon the visual appearance of the buildings, particularly when considering the overall precinct development of Shepherd Street. Each tower is a high quality architectural response to the individual constraints and opportunities of the sites;
- The units will not look directly into each other and impact upon visual or acoustic privacy. In particular, windows in 26 Shepherd Street are oriented towards the river, whilst 28 Shepherd Street is provided with opaque glazing and high level windows.
- The variation from the building separation controls does not significantly impact upon solar access.

The objectives of the zone

The development is in accordance with the objectives of the zone as per the below:

a) To provide for the housing needs of the community within a high density residential environment.

The proposed development will make a substantial contribution towards the housing needs of the community by providing 232 new residential dwellings within a high density residential environment with significant communal infrastructure on site.

b) To provide a variety of housing types within a high density residential environment.

The development provides a variety of housing types including 1, 2 and 3 bedroom units.

c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.

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 development also further supports the adaptive reuse of the Heritage Mills Building which will provide for local non-residential uses to support and revitalise the surrounding area and Georges River Precinct.

d) *To provide for a high concentration of housing with good access to transport, services and facilities.*

The proposed development has good access to transport including Liverpool and Casula Train stations and local pedestrian, cycling and bus routes.

e) *To minimise the fragmentation of land that would prevent the achievement of high density residential development.*

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.

7 Any matters of significance for State or regional environmental planning

This written request is for an exception to the building separation (Clause 7.4) standard under Clause 4.6 of the LLEP 2008. The proposal justifies the contravention to the building separation standard in the terms required under Clause 4.6 of the LEP and in particular demonstrates that the proposal provides a better planning outcome with no significant adverse environmental impacts. Therefore in the circumstances of the case:

- Compliance with the standard is unreasonable and unnecessary;
- There are sufficient environmental planning grounds for the contravention, given a better overall outcome is achieved particularly with respect to heritage preservation;
- It is in the public interest in being consistent with the objectives of the height standard , zone; and
- There are no matters of State or regional planning significance and no public benefits in maintaining the height standard in this case.

It is therefore recommended that this variation request be approved by the consent authority.