

**OBJECTION PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MINIMUM
SUBDIVISION LOT SIZE AS DETAILED IN CLAUSE 4.1 OF THE MANLY
LOCAL ENVIRONMENTAL PLAN 2013**

For: Attached Dual Occupancy
At: 143 Balgowlah Road, Balgowlah
Owner: Nonie Veness & Pasa Saglam
Applicant: Nonie Veness & Pasa Saglam

The subject development application relates to the construction of an attached dual occupancy and the two lot Torrens title subdivision of land at No. 143 Balgowlah Road, Balgowlah (**Site**). The subject property, which has a total lot size of 490.5m², is zoned R1 – General Residential under the Manly Local Environmental Plan 2013.

This Clause 4.6 written request is prepared on the basis of the architectural plans prepared by Scope Architects, Project No. 020001, Revision 1 and dated 05.05.2021.

The proposal seeks approval for a variation to the minimum subdivision lot size (**Minimum Subdivision Lot Size**) development standard in clause 4.1 of the Manly Local Environmental Plan 2013.

4.1 Minimum subdivision lot size

(1) The objectives of this clause are as follows—

- (a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*
- (b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*
- (c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*
- (d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

(2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

The Lot Size Map indicates that the minimum allotment size that applies to the Site and therefore to proposed Lot 1 and 2 is **250m²** for each allotment.

The lot sizes resulting from the proposed subdivision are:

Existing Lot Size:	490.5m²
Proposed Lot 1:	245.3m²
Proposed Lot 2:	245.2m²

The following clause 4.6 written request has been prepared having regard to clauses 4.1 and 4.6 of the Manly Local Environmental Plan 2013 and recent judgments of the Land & Environment Court. It is submitted that the variation is well founded and is worthy of the support of the Council.

1. Objectives of Clause 4.6

The objectives of Clause 4.6 of the LEP 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.*

2. The standard to be varied is a Development Standard to which Clause 4.6 applies

Clause 4.1 of the Manly Local Environmental Plan 2013 is contained within Part 4 which is titled Development Standards to be complied with. It is also considered that the wording of the clause is consistent with previous decisions of the Land & Environment Court in relation to matters which constitute development standards.

It is also noted that clause 4.1 does not contain a provision which specifically excludes the application of clause 4.6 and vice a versa.

On this basis it is considered that clause 4.1 is a development standard for which clause 4.6 applies.

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

Sub-clause 4.6(3) sets out the matters that must be demonstrated by a written request seeking to justify a contravention of the relevant development standard (that is not expressly excluded from the operation of clause 4.6 Manly Local Environmental Plan 2013):

(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.

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out five justifications to demonstrate that compliance with a development standard is unreasonable or unnecessary. These include:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying objective or purpose would be defeated or thwarted if compliance was required.
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or
- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

The objectives of the Minimum Lot Size standard are set out in clause 4.1(1) of Manly Local Environmental Plan 2013 and are as follows:

- (a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*
- (b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*
- (c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*
- (d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

Compliance with the Minimum Lot Size standard is unreasonable or unnecessary in the circumstances because the objectives of the standard are achieved notwithstanding the non-compliance, in light of the following:

- a. The proposal will result in lot sizes and dimensions which are able to accommodate development consistent with relevant development controls.

- b. The proposed allotment sizes are sufficient to provide a dwelling on each allotment that is of a useable/functional area and sufficient landscaping. This has been demonstrated with the dwelling designs and that the proposal complies with the landscaped area controls of the DCP.
- c. The proposal complies with the density provisions of the LEP.
- d. There are no constraints of the site that would require larger allotments. The proposal retains the tree within the road reserve, there is no loss of significant views and there no natural features of the site which are required to be retained.
- e. The site is well located in terms of public transport, being within close proximity of a number of bus stops. The site is also located in proximity to local facilities and services and the area is well serviced by pedestrian accessways.
- f. Other than the proposed non-compliant lot size the proposal is considered to result in development which is otherwise compliant with the requirements of the Manly Local Environmental Plan 2013 & Manly DCP, particularly in relation to building height, floor space ratio and landscaped area.
- g. The proposal will not result in any unreasonable impacts upon the amenity of the adjoining properties particularly in relation to visual and acoustic privacy or overshadowing as a result of the proposed lot size or the resultant development.
- h. The proposed subdivision will not result in any unreasonable arboricultural impacts. The proposal does not result the removal of any significant vegetation and ensures the retention of the existing street tree.
- i. The proposal will ensure that the resultant allotments reflect and reinforce the predominant subdivision pattern of the area. It is noted that the surrounding locality contains a number of similar attached dual occupancies that have been subdivided including No. 141/141A and No. 147/147A Balgowlah Road.
- j. It is submitted that the proposal will provide for a compatible form of subdivision and will present to the street in a manner consistent with the existing streetscape, noting that the proposal allows for the retention of all vegetation located within the frontage of the property.

4. There are sufficient environmental planning grounds to justify contravening the development standard

The proposed development promotes the objectives identified in the Environmental Planning and Assessment Act 1979 section 1.3 in that the proposal will provide for the “promote the orderly and economic use of the land” and “good design and amenity of the built environment”.

Accordingly, the proposal promotes the objectives of the Environmental Planning and Assessment Act 1979 and there are also sufficient environmental planning grounds to justify the contravention of the Minimum Lot Size standard, which include:

- The non-compliance is very minor being only 4.8m² or a variation of 1.9%.
- The proposal is in the public interest as it has been demonstrated above that the proposal is consistent with the objectives for development in the zone and the objectives of the lot size development standard.

- The proposal will ensure the orderly and economic use of the land. The proposal enables the construction of two dwellings, to increase the housing stock and provide an alternative form of housing in the locality.
- The proposal provides for a design that is compatible with the existing surrounding development which comprises a range of development including No. 141/141A and No. 147/147A Balgowlah Road which both comprise attached dual occupancies that have been subdivided with similar allotment sizes.

5. 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 proposed development is consistent with the objectives of the Minimum Lot Size development standard, which is demonstrated in the analysis above.

The proposed development is also consistent with the R1 General Residential Zone objectives in Manly Local Environmental Plan 2013.

The objectives for the R1 – General Residential zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

In relation to the above objectives for the R1 – General Residential zone the proposal is consistent with those objectives given that:

1. The proposal provides for the housing needs of the community via the creation of an additional Torrens title allotment. The motivation behind the development is provide for a development that is compatible with the surrounding development, with a variety of housing types.
2. The proposal provides for an additional Torrens title allotment which is capable of providing for housing that is compatible with the existing environmental and built character of the locality. In support of this proposition, it is submitted that:
 - a. The proposal will not result in any unreasonable impacts upon the adjoining properties.
 - b. The proposal will not result in any adverse streetscape impacts.
 - c. The proposal will not result in any unreasonable impacts upon existing trees and vegetation and will not result in unreasonable tree loss.
 - d. The proposal will not result in any unreasonable overshadowing of adjoining properties.
 - e. The proposal will not result in any unreasonable visual or acoustic impacts upon adjoining properties.
 - f. The proposal will not result in an unreasonable loss of outlook for any adjoining properties.

- g. The proposal will provide for a built form which is compatible with the surrounding locality.
- h. The proposal will provide for two dwellings which will provide for a high standard of residential amenity for both the future residents of the proposal and the adjoining properties.

As the proposal is consistent with the objectives of the Minimum Lot Size development standard and the objectives of the R1 General Residential Zone the proposed development is considered to be in the public interest in satisfaction of clause 4.6(4)(a)(ii).

6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

Sub-clause 4.6(4) requires that the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained and sub-clause 4.6(5) enumerates matters that the Planning Secretary must consider in deciding whether to grant concurrence.

The Planning Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002, that the Planning Secretary's concurrence may be "assumed" for exceptions to development standards, subject to certain conditions contained in the notice. One circumstance where the Planning Secretary's concurrence cannot be assumed is where the development contravenes a numerical standard by greater than 10%.

The noncompliance with the Minimum Lot Size development standard for proposal is only 1.9%. This is no impediment to the granting of consent.

Further, it is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning and there is no identifiable public benefit in maintaining the development standard.

7. Conclusion

This written request justifies the proposed variation to the Minimum Lot Size development standard in the terms required under clause 4.6 of Manly Local Environmental Plan 2013. In summary, the proposed variation in relation to the non-compliant allotment size is justified for the following reasons:

- The proposal will not result in any adverse streetscape impacts.
- The proposal will not result in any unreasonable impacts upon existing trees and vegetation and will not result in unreasonable tree loss.
- The proposal will not result in any unreasonable overshadowing of adjoining properties.
- The proposal will not result in any unreasonable visual or acoustic impacts upon adjoining properties.
- The proposal will not result in an unreasonable loss of outlook for any adjoining properties.

- The proposal will provide for a built form which is compatible with the surrounding locality.

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