

# Clause 4.6 Variation Statement

1744 PITTWATER ROAD, BAYVIEW

Title Details:	Lot B on DP390788
Proposal:	Development Application for 1 into 2 Lot Subdivision
Owner:	Mr Irwin
Applicant:	Melissa Neighbour, Sky Town Planning
Consent Authority:	Northern Beaches Council
Date:	20 November 2020



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# 1 Introduction

This Clause 4.6 Variation Report supports a Development Application submitted to Northern Beaches Council, pursuant to the Environmental Planning and Assessment Act 1979 (EP&A Act). The Development Application is seeking consent for the subdivision of Lot B DP390788 into two (2) residential lots, known as 1744 Pittwater Road, Bayview.

This report has been prepared to request a variation to Clause 4.1 Minimum subdivision lot size of the Pittwater Local Environmental Plan 2014 as it applies to the subdivision proposal plan prepared by DSP dated 07/05/2019 submitted under separate cover.

This request responds to NSW Planning & Infrastructure 'guide for varying development standards' which states that development applications seeking to vary a development standard must include a clause 4.6 written request. The guide outlines all matters that need to be considered in clause 4.6 written requests. Each of these matters has been diligently addressed in Section 3.0 of this report.

## 2 Clause 4.6

Clause 4.6 of Pittwater Local Environmental Plan 2014 enables an exception to the maximum allowable yield standard, subject to consideration of a written request from the applicant justifying the contravention. Relevant extracts of Clause 4.6 of LEP 2012 read 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 Planning Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Planning Secretary 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 Planning Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*
  - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

**Note—**

*When this Plan was made it did not include all of these zones.*

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
  - (a) *a development standard for complying development,*
  - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,*
  - (c) *clause 5.4.*

# 3

## Grounds for variation

This section responds to questions provided in Appendix 3 of the NSW Planning & Infrastructure 'guide for varying development standards.'

### 1. What is the name of the environmental planning instrument that applies to the land?

Pittwater Local Environmental Plan 2014

### 2. What is the zoning of the land?

The subject property is zoned E4 Environmental Living.

### 3. What are the objectives of the zone?

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

#### Comment:

It is considered that the proposed development meets the objectives of the Zone E4 Environmental Living. This is justified on the basis that the subdivision will facilitate the development of two new dwellings, thus increasing housing variety within the area. Further, the proposal will increase housing density in an established residential area, that is close to the services and facilities of the local economic centre, making efficient and orderly use of well-located land.

The subdivision allows for the new building footprint in Lot 2 to be setback the required distance from the foreshore, as such foreshore vegetation and natural coastal processes will not be impacted by the development.

#### 4. What is the development standard being varied?

Minimum Subdivision Lot Size – 700sqm

#### 5. Under what clause is the development standard listed in the environmental planning instrument?

‘Clause 4.1 Minimum Subdivision Lot Size of the Pittwater Local Environmental Plan 2014.

#### 6. What are the objectives of the development standard?

Each of the objectives of the development standard are addressed individually below.

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

- (a) *to protect residential character and amenity by providing for subdivision where all resulting lots are consistent with the desired character of the locality, and the pattern, size and configuration of existing lots in the locality,*

Comment: The pattern of subdivision in the vicinity of the site is characterised by rectangular shaped allotments of varying widths and sizes, interspersed by battle-axe allotments, as shown in the following map (source: sixmaps):



The proposed battle-axe subdivision is consistent with those in the surrounding area. The proposed allotments width and size are also similar to a number of allotments in the area.

As shown in the map above, the proposed subdivision is entirely in keeping with *the pattern, size and configuration of existing lots in the locality*, and with the low density residential character and environment, desired by Council in this area.

The objective is achieved.

*(b) to provide for subdivision where all resulting lots are capable of providing for the construction of a building that is safe from hazards,*

Comment: A geotechnical report and civil design plans have been submitted with this development application which demonstrate the subdivision is capable of providing for the construction of dwellings that will be safe from hazards.

The objective is achieved.

*(c) to provide for subdivision where all resulting lots are capable of providing for buildings that will not unacceptably impact on the natural environment or the amenity of neighbouring properties,*

Comment: The land is suitable for the density that is proposed and each lot provides sufficient area for building and landscaping which will have a low impact on the adjoining properties. The approximate 2% variation to the minimum subdivision lot size control of lot 1, is entirely as a result of including a passing bay. While the passing bay cannot be included in the formal area calculation of the lot, the land does still add to the size of the property creating the required space suitable for the subdivision.

As demonstrated in the Statement of Environmental Effects, submitted with this application, the analysis of the impact of the addition on neighbouring properties or on the streetscape reveals it will not create any adverse unreasonable environmental or amenity related impacts.

While the proposal is only for subdivision and the final built form for 2 separate dwellings will be the subject of separate subsequent DAs, a site analysis plan has been prepared to assess potential impact upon adjoining properties.

As can be seen on the site analysis plan, the proposed subdivision, will not unreasonably impact the main views and vistas of neighbouring properties towards the water.

The building platform for Lot 2 is set back from the foreshore and meets the DCP control, thereby not affecting the natural coastal processes.

The objective is achieved.

*(d) to provide for subdivision that does not adversely affect the heritage significance of any heritage item or heritage conservation area,*

Comment: Not applicable. Site is not have heritage significance.

*(e) to provide for subdivision where all resulting lots can be provided with adequate and safe access and services,*

Comment: The lots can be adequately serviced and accessed as shown on the proposed plan of subdivision and the civil engineering plans submitted with the DA.

The objective is achieved.

*(f) to maintain the existing function and character of rural areas and minimise fragmentation of rural land,*

Comment: Not applicable. Site is not rural land.

*(g) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*

Comment: The size and dimensions of the lots are appropriate in order to allow for the future development of dwellings with setbacks and minimum areas that comply with the DCP controls.

The objective is achieved.

## **7. What is the numeric value of the development standard in the environmental planning instrument?**

700sqm



**8. What is proposed numeric value of the development standard in your development application?**

The proposed subdivision will result in two allotments, one that is compliant, and one non-compliant lot, as per the following site areas:

Lot 1: 685sqm

Lot 2: 701sqm

**9. What is the percentage variation (between your proposal and the environmental planning instrument)?**

Approximately 2.16 % variation for Lot 1.

**10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?**

The minor 2.16% variation arises solely as a result of the inclusion of a passing way for the driveway. If this were not required, the subdivision would comply with the LEP minimum subdivision lot size control. Despite this minor non compliance, as outlined above, this development is in keeping with *the pattern, size and configuration of existing lots in the locality*, and with the low density residential character and environment, desired by Council in this area, and the proposal meets all of the objectives of the development standard.

In particular, by varying the control, the development is able to provide additional housing and maximise the environmental, social and economic opportunities of the site by increasing housing density near employment, services and facilities.

As demonstrated in the Statement of Environmental Effects, submitted with this application, the analysis of the impact of the addition on neighbouring properties or on the streetscape reveals it will not create any adverse unreasonable environmental or amenity related impacts. While the proposal is only for subdivision and the final built form for 2 separate dwellings will be the subject of separate subsequent DAs, a site analysis plan has been prepared to assess potential impact upon adjoining properties.

As can be seen on the plan, the proposed subdivision, which will result in two dwellings being built as part of future DAs, will not unreasonably impact the main views and vistas of neighbouring properties towards the water.

The main views from the adjoining dwellings towards the water are not impacted. While some side views maybe marginally impacted, the extent of this impact cannot be assessed until a dwelling is proposed as part of a new DA. In any case, as per the view sharing principles and assessment, enunciated by the decision of Senior Commissioner Roseth in *Tenacity Consulting P/L v Warringah Council* (2004)

NSWLEC 140, ‘views across side boundaries are more difficult to protect than those from front boundaries’, and further “The expectation to maintain side views is often unrealistic.” This proposed subdivision will ensure that the main views to the water from adjoining dwellings will be maintained. The proposal meets the view sharing principals and will result in equitable preservation of views and vistas.

In summary, the development has no unreasonable negative consequences as a result of this minor non-compliance which arises solely for the need to include a passing bay in the driveway. Further, it meets the objectives of the development standard as demonstrated in this statement, and therefore strict compliance with the development standard would be unreasonable and unnecessary.

**11. How would strict compliance hinder the attainment of the objects specified in Section 1.3(a) and (c) [previously s5(a)(i) and (ii)] of the Act.**

*1.3 (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.*

*1.3 (c) To promote the orderly and economic use and development of land.*

Comment:

The proposed subdivision will maximise the use of the site to its full potential and allow for 2 dwellings to be built, thereby providing additional much needed housing stock, and also maximising the use of existing infrastructure, public transport, local facilities and services.

This is an improved outcome of the site while maintaining a low density, residential environment.

As such strict compliance in this regard would limit the objectives being fully attained.

**12. Is the development standard a performance- based control? Give details.**

The objectives of the development standard provide the controls to allow a performance based solution. For the reasons outlined herein, it is demonstrated the proposal meets the objectives of the development standard, therefore Council should consider “compliance to the standard unreasonable in the circumstances of the development”.

**13. Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?**

Yes, please refer to answers in 10, 11 and 12 preceding.

**14. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.**

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

Firstly, it is relevant to reiterate that the minor 2.16% variation is solely as a result of the inclusion of a passing pay for the driveway. If this were not required, the subdivision would comply with the LEP minimum subdivision lot size control.

In any case, the following is a summary of the environmental planning grounds outlined in this statement, that justify varying the development standard under Clause 4.6:

- The proposed subdivision is consistent with the prevailing subdivision pattern in the locality.
- There are no statutory zoning or zone objectives that are an impediment to the granting of approval to the proposed development.
- This proposed subdivision provides the opportunity for two dwellings that can meet view sharing principals and will result in equitable preservation of views and vistas.
- The size and dimensions of the lots are appropriate in order to allow for the future development of dwellings with setbacks and minimum areas that comply with the DCP controls.
- The subdivision is an efficient and economic use of land that maximises the use of local infrastructure.
- The subdivision provides for an improved outcome in a way that does not compromise the low density residential character of the streetscape and area.

# 4 Conclusion

The non-compliance to the minimum subdivision lot size control is in this particular case, considered acceptable based on the extensive and accepted planning rationale outlined herein.

Specifically, it is our view that the variation does not:

- Hinder the attainment of the objects specified in 1.3(a) and (c) [previously s5(a)(i) and (ii)] of the *Environmental Planning and Assessment Act 1979*;
- Raise any matter of significance for State or Regional planning; or
- Create any unreasonable precedent, as the proposed subdivision is consistent with the prevailing subdivision pattern in the locality.
- Impact unreasonably on adjoining properties.

As shown herein, the development is still capable of satisfying the relevant objectives notwithstanding the minor 2.16% minimum subdivision lot size variation and having regard to the facts outlined in this submission it is our view that it is both unreasonable and unnecessary for Council to insist upon compliance with the prescribed control in this instance.