

122-128 Crescent Road & 55-57 The Avenue, Newport NSW 2106

Clause 4.6 Variation Request –
Minimum Subdivision Lot Size

On behalf of 57 The Avenue Pty Ltd

October 2022

The Planning Studio acknowledges the traditional custodians of the lands + waters of Australia, particularly the Gadigal People on whose traditional lands our office is located, and pay our respects to Elders past, present + emerging. We deeply respect the enduring Connection to Country + culture of Aboriginal and Torres Strait Islander peoples and are committed to walk alongside, listen + learn with community as we plan for equitable, sustainable, generous, and connected places. Always was, Always will be.

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1 Introduction

This Clause 4.6 variation request has been prepared by The Planning Studio on behalf of the applicant and is submitted to Northern Beaches Council (Council) in support of a Development Application (DA) for 122-128 Crescent Road, and 55-57 The Avenue Newport (the site), which proposes subdivision of the land into nine residential lots.

The request seeks to vary the development standard for minimum subdivision lot size (Clause 4.1) of the Pittwater LEP 2014 (PLEP 2014). This Clause 4.6 variation request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of case, that there are sufficient environmental planning grounds to justify contravening the development standard and that the proposed development will be in the public interest because it is consistent with the objectives of the Minimum Subdivision Lot Size standard and the objectives for development within the C4 Environmental Living zone in which the development is proposed to be carried out.

The variation allows for a development that provides for the orderly and economic use of the land in a manner which is appropriate when considering the site's context and specific environmental conditions.

This Clause 4.6 variation written request adequately demonstrates that, notwithstanding the numerical non-compliance, the proposed development:

- Achieves the objectives of the Minimum Subdivision Lot Size development standard in Clause 4.1 of the PLEP2014 (Wehbe#1);
- Has sufficient environmental planning grounds to justify the variation;
- Is consistent with the objectives of the C4 Environmental Living zone prescribed by PLEP 2014;
- Is consistent with the applicable and relevant State and Regional planning policies; and therefore
- Is in the public interest.

As a result, the development application may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the PLEP 2014.

2 The Development Standard to be varied

This Clause 4.6 variation has been prepared as a written request seeking to justify a contravention of the maximum Minimum subdivision lot size development standard as set out in Clause 4.1(2) of the PLEP 2014.

Clause 4.1(1) states:

4.1 Minimum subdivision lot size

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



- (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,
- (d) to provide for subdivision that does not adversely affect the heritage significance of any heritage item or heritage conservation area,
- (e) to provide for subdivision where all resulting lots can be provided with adequate and safe access and services,
- (f) to maintain the existing function and character of rural areas and minimise fragmentation of rural land,
- (g) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.

As identified on the PLEP 2014 Height of Buildings Map associated with Clause 4.3, the site is subject to a 'base' height limit of 24m (refer to **Figure 1**).



Figure 1: Minimum subdivision lot size

3 Extent of Variation to the Development Standard

As shown in the subdivision plan below, all lots meet the minimum lot size requirement of 700m², with the exception of Lot 5, which has a site area proposed of 640m² once the Right of Way is excluded. It is noted that this site area is a variation 8.6%, which is less than 10% and therefore consistent with the requirements under Clause 4.6(6) of the PLEP 2014.





Figure 2: Proposed subdivision plan (Scott Carver)

4 Objectives of the Standard

The objectives of the Clause 4.1 Minimum subdivision lot size development standard 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,
- (b) to provide for subdivision where all resulting lots are capable of providing for the construction of a building that is safe from hazards,
- (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,
- (d) to provide for subdivision that does not adversely affect the heritage significance of any heritage item or heritage conservation area,
- (e) to provide for subdivision where all resulting lots can be provided with adequate and safe access and services,



- (f) to maintain the existing function and character of rural areas and minimise fragmentation of rural land,
- (g) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.

5 Objectives of the Zone

The objectives of the C4 Environmental Living zone are as follows:

- 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.

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 height standard is considered unreasonable and unnecessary in the circumstances for the reasons outlined in **Section 6.1** below.

6.1 The Objectives of the Standard are Achieved Notwithstanding Non-Compliance with the Standard (Wehbe#1)

The following sections demonstrate that the proposed variation will result in a built form outcome that achieves the objectives set out under Clause 4.1 of the PLEP 2014.

6.1.1 Objectives of Clause 4.1 – Minimum subdivision lot size standard

The following sections demonstrate that the objectives associated with the Clause 4.1 development standard are achieved notwithstanding the proposed non-compliance.

- 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,**

The development seeks subdivision of the land into 9 residential lots, all of which comply with the minimum lot size, with the exception of Lot 5. As shown in the Figure below, the proposed subdivision will be consistent with the existing subdivision pattern in the immediate surrounds, where lots generally range from just under 700m² through to more generous lots of 900m². There are other lots in close proximity to the subject site that have lot sizes smaller than 700m², including 109 Crescent Road (684m²), and 46 The Avenue Newport (686m²). These lots do not appear out of character or inconsistent with the desired subdivision pattern of the locality.





Figure 3: Surrounding subdivision pattern

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

As shown in the architectural envelope diagram prepared by Scott Carver, all lots are capable of providing for the construction of a building that is safe from hazards. All future dwellings are able to sit above the building foreshore line. They are also able to obtain safe and easy pedestrian and vehicular access. The subdivision will enable the undergrounding of existing high-voltage electricity wires and will be capable of complying with local and state planning controls as they relate to hazards.





Figure 4: Proposed architectural envelopes (Scott Carver)

- 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,

As demonstrated in **Figure 4** above, all proposed lots are capable of delivering buildings that will not unacceptably impact on the amenity of neighbouring properties. The future buildings will be capable of achieving:

- Appropriate front, side and rear boundary setbacks;
- Appropriate site width and depth;
- The ability for up to 60% of the site to not form part of the building envelope;
- and
- Safe pedestrian access.

Each of the lots, including the single non-compliant lot, will be capable of achieving the LEP and DCP amenity controls, as they apply to land subdivision. The non-compliant lot will not create a circumstance where the remaining lots are unable to achieve key amenity compliance.

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

Not applicable. The site is not a heritage item, or within a heritage conservation area.

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

As shown in the Figure below, detailed consideration has been made to ensure that all lots can be provided with safe pedestrian and vehicular access, as well as key services including sewer, water, gas, electricity and communications. The development will also enable the undergrounding of existing high voltage electricity lines, which will improve the safety and services for the subject lots and surrounds. The proposed subdivision also ensures a safe access to the future residential marina for all dwellings.

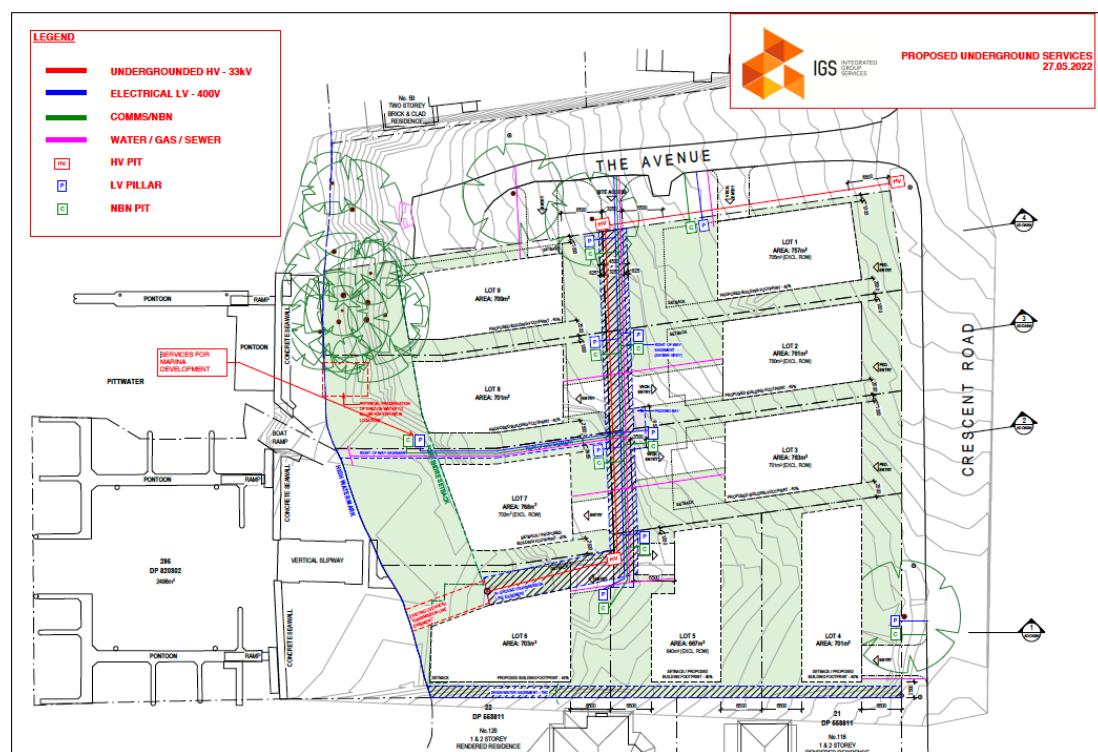


Figure 5: Proposed subdivision servicing (IGS)

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

Not applicable. The site is not within a rural zone.

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

As demonstrated in this report and the Statement of Environmental Effects, all lots will be able to accommodate development consistent with the Pittwater LEP 2014 and DCP 21, despite the variation being sought to Lot 5.



6.2 Clause 4.6(3)(b) - There are sufficient Environmental Planning Grounds to Justify Contravening the Development Standard.

Clause 4.6(3)(b) of the PLEP 2014 requires that the consent authority be satisfied that the applicant's written request has adequately demonstrated that:

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

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118), also 'Rebel MH' and 'Baron' (2019).

The environmental planning grounds relied upon to justify the exceedance of the development standard in the circumstances of the proposal are considered sufficient and specific to the site and the proposed contravention.

As confirmed by supporting consultant reports and addressed throughout this variation request, the non-compliance with the development standard does not result in any adverse environmental planning impacts. Specifically, relative to a complying scheme that met the minimum lot size for all 9 lots, there will be no additional impacts to surrounding properties with respect to hazards, bulk, visual and acoustic privacy, services or amenity.

The variation is only sought for a single lot and is less than the 10% maximum variation permitted under Clause 4.6(6) of the Pittwater LEP 2014. For the reasons discussed above, it is contended that there are sufficient environmental planning grounds to justify the contravention to the development standard in the circumstances of the case, particularly given that the subdivision delivers a high-quality future residential development.

6.3 Clause 4.6(4)(a)(i) – 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

6.3.1 Consistency with the objectives of the development standard

The proposed development is consistent with the objectives of the Minimum Subdivision Lot Size development standard for the reasons discussed in **Section 6.1** of this report.



6.3.2 Consistency with the C4 – Environmental Living Objectives

To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.

The proposed subdivision will better align the subject lots with this zone objective than the existing development on site. The site currently includes a commercial marina, which is not a permitted use under the C4 Environmental Living zone and does not align with the objective of providing low impact residential development. The marina is permitted through Schedule 1, and the subject application will result in the conversion of the entire site for use as low-impact residential dwellings.

To ensure that residential development does not have an adverse effect on those values.

The proposed subdivision will enable future residential development that complies with both state and local controls as they apply to residential development in the subject zone. The development will enable a future use that removes the impact of the site's existing non-residential use.

To provide for residential development of a low density and scale integrated with the landform and landscape.

Future residential development in each of the lots will be of a low-density scale and integrated with the landform and landscape.

To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

The proposed future development will enhance the riparian and foreshore vegetation and wildlife corridors by removing a number of commercial marina uses on site, and the associated hardstand including the car parking and boatshed. All future residential lots will meet Council's requirements for landscape, vegetation and biodiversity and will be substantially set back from the foreshore.

7 Secretary's Concurrence

Under Clause 4.6(5) of the PLEP 2014, the Secretary's concurrence is required prior to granting consent to a variation. Under Clause 64 of the Environmental Planning and Assessment Regulation (2000), the Secretary has given written notice dated 21 February 2018 to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice.

The Planning Circular PS 20-002, issued on 5 May 2020 (the Planning Circular), outlines the conditions for assuming concurrence. The Planning Circular establishes that all consent authorities may assume the Secretary's concurrence under Clause 4.6 of the Standard Instrument (Local Environmental Plans) Order 2006 (with some exceptions). The PLEP 2014 is a standard instrument LEP and accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to Clause 4.6(5). This assumed concurrence notice takes effect immediately and applies to pending development applications.

Under the Planning Circular this assumed concurrence is subject to conditions. Where the development contravenes a numerical standard by greater than 10%, the Secretary's



concurrence may not be assumed by a delegate of council unless the Council has requested it. It is noted that the subject variation being sought is less than 10%.

7.1 Clause 4.6(5)(a): 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 proposed variation will not contravene any overarching State or regional objectives or standards.

7.2 Clause 4.6(5)(b): Any Public Benefit of Maintaining the Development Standard

As demonstrated above there is no public benefit in maintaining the development standard in terms of State and regional planning objectives, or in terms of minimising the environmental impacts of the development given the proposal's compliance with other key DCP controls.

7.3 Clause 4.6(5)(b): Other Matters Required to be Taken into Consideration Before Granting Concurrence

Other than those identified above, there are no further matters that the Secretary (or Consent Authority under delegation) must consider before granting concurrence.

8 Conclusion

The assessment above confirms that compliance with the maximum Minimum Subdivision Lot Size development standard contained in Clause 4.1 of PLEP 2014 is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the contravention to the development standard.

This Clause 4.6 variation request demonstrates that notwithstanding the non-compliance with the Height of Buildings development standard, the proposal:

- Achieves the objectives of the development standard in Clause 4.1 of the PLEP 2014;
- Delivers a development that is appropriate for its context despite the breaches to development standards and therefore has sufficient environmental planning grounds to permit the variation;
- There are no matters of State or regional planning significance and no public benefit associated with maintaining the height standard in this case;
- Is in the public interest as it is consistent with the objectives of the development standards nominated under Clause 4.1 as well as the C4 Environmental Living zone under the PLEP 2014; and
- Therefore, compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposal.

