

Clause 4.6 Variation Request Report

8 Walsh Street
North Narrabeen NSW 2101

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1 Introduction

1.1 Report purpose

Development consent is being sought for a one-into-two lot Torrens title subdivision at 8 Walsh Street, North Narrabeen. This development standard variation request has been prepared under Clause 4.6 of the Pittwater Local Environmental Plan 2014 to justify the departure from development standard for Minimum subdivision lot sizes in Clause 4.1 of the LEP. The development falls slightly short by 4.7% of the minimum lot size for a two-lot subdivision under Clause 4.1 of the *Pittwater LEP 2014* and, as such, a variation is sought under Clause 4.6.

Clause 4.6 aims to provide an appropriate degree of flexibility in applying certain development standards. It is a facilitative clause which enables the consent authority to grant consent to a development although it contravenes a development standard. This is subject to the consent authority being satisfied that there are proper planning grounds to justify the contravention.

This report contends that in the unique circumstances of this development being on this particular site, the adherence to the minimum lot size is unnecessary in this case due to the achievement of the objectives of the clause and positive environmental planning outcomes achieved by the proposed subdivision; withstanding the non-compliance allows for the orderly and economic use of the land in an appropriate manner.

1.2 Variation Request Summary

This Clause 4.6 Variation Request demonstrates that:

- That compliance with the relevant development standard is unreasonable or unnecessary in the circumstances as the development achieves the objectives of the development standard in Clause 4.1 of the LEP notwithstanding the non-compliance;
- That there are sufficient environmental planning grounds to justify contravening the development standard;
- That this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3);
- That the proposed subdivision would be in the public interest because it is consistent with the objectives of the Minimum subdivision lot size and the objectives for development within the zone;
- The subdivision provides for a compatible infill subdivision within the low-density residential environment;
- The rear lot will provide the opportunity for additional low-density housing for the owner being the applicant;
- The proposed subdivision will be providing a smaller, more manageable lot for the existing dwelling, while creating a rear lot suitable for the construction of a dwelling in the future;
- The proposal provides an ecologically sustainable development type by retaining the existing dwelling;
- The positive outcomes of the departure from the standard outweigh the negatives which would result from strict adherence to the standard as set out under Clause 4.1 Minimum subdivision lot size.

2 Planning Context

2.1 Clause 4.6

Clause 4.6 of the Pittwater Local Environmental Plan 2014 permits departures from development standards in certain circumstances. Clause 4.6 states as follows:

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 RUI Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 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,*
- (caa) clause 5.5.*

It is necessary to consider if compliance with the development standard is consistent with the aims of the LEP and whether compliance with the development standard hinders the attainment of the Objects of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* which are:

- 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,*
- b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- c) to promote the orderly and economic use and development of land,*
- d) to promote the delivery and maintenance of affordable housing,*
- e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- g) to promote good design and amenity of the built environment,*
- h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- j) to provide increased opportunity for community participation in environmental planning and assessment.*

As stated above, the aims and objectives of the Pittwater Local Environmental Plan 2014 Clause 4.6 (1) 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.

Under Clause 4.6(3) and (4) of the Pittwater Local Environmental Plan 2015, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

- (3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (3)(b) there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4)(a)(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,*

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

2.2 Case Law

Several key NSW Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and directions from these cases are summarised below and the relevant cases referenced.

Wehbe v Pittwater [2007] NSW LEC 827

This case is the pinnacle decision on how to establish that compliance with a development standard is unreasonable or unnecessary. The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827 (Wehbe)*, expanded on the findings in *Winten v North Sydney Council*, and identified the now well known, five (5) ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that a request must satisfy all five ways, or that they were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five (5) ways outlined in **Wehbe** include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Way**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Way**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Way**).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Way**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Way**).

Other key cases and their findings

Since the **Wehbe** decision and five (5) ways were established, case law over the last few years has refined and given greater clarification around the writing and assessing of a Clause 4.6 variation request. These cases include:

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC 90 (**Four2five**);
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSW LEC 7 (**Micaul**);
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (**Initial Action**);
- *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSW LEC 191 (**Rebel Neutral Bay**); and
- *Thompson Health Care Pty Limited v Ku-ring-gai Council* [2020] NSW LEC 1363 (**Thompson Health Care**).

In summary these cases have helped to establish that:

- It is necessary to demonstrate compliance with the Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
- It is necessary to provide clear argument as to why adherence to the standard is unreasonable and unnecessary specific to the proposal and the aspect of the proposal which is non-compliant;
- It is necessary that the argument is founded on environmental planning grounds and does not necessarily need to facilitate a neutral or better outcome;
- It is necessary to provide adequate justification and assessment of the ability of the development to achieve the objectives of the standard and zone, notwithstanding the non-compliance;
- It is satisfactory that the consent authority need only be indirectly satisfied that the written request adequately addresses the non-compliance;
- In contrast to the indirect satisfaction with the adequacy of the written request, the consent authority must then be directly satisfied that the proposed development, contravening the development standard, will be in the public interest;
- Satisfying all these ensure compliance with the requirement that all three elements of Clause 4.6 must be met.

Each of these matters have informed the preparation of this request and the opinion that the variation of the Minimum subdivision lot sizes in Clause 4.1 of the Pittwater Local Environmental Plan 2014 is justified in the case of the proposed development.

2.3 Balancing development standards and environmental planning outcomes

Clause 4.6 provides an opportunity for the efficient administration of planning law through the ability to balance technical development standard compliance with good environmental planning outcomes that can be achieved through varying a development standard. As noted in the ongoing use of Clause 4.6, and the case law mentioned above, it is possible to meet planning objectives and promote positive, rather than negative, environmental planning outcomes when departing from a development standard when balancing planning law with the merits of a site, the needs of owners, and the broader context and setting.

The departure supported by this Clause 4.6 variation request highlights how, in this particular instance, the positive outcomes specific to this site and locality outweigh any negatives perceived to result from departures to development standards.

Importantly, support for the proposed departure will not set a precedent as the uniqueness of this site and the proposal demonstrate that while strict adherence to the set development standard is desirable generally, there is the opportunity to achieve a better environmental planning outcome on this site, through the development as proposed. This is notwithstanding the non-compliance of having 1048 sqm, or 4.7% less than the minimum, compared to the Development Standard of 1100 sqm minimum lot size for subdivision under Clause 4.1(3).

3 Development Overview

3.1 The Subject Site

The site is located at 8 Walsh Street, North Narrabeen and described in the table below. The location of the subject property is shown on the location and aerial maps at **Figures 1** and **2** A Google street image of the property is included at **Figure 3**. The property is located in the Northern Beaches Council area.

The site is improved with single storey dwelling of brick and tile roof dating from c.1960. A pool and ancillary sheds are also located within the rear yard of the property. The land is relatively level and vehicular access is taken from Walsh Street along the western boundary. The surrounding land use/streetscape is characterised by residential development, including single dwellings and multi dwelling housing.

The deposited plan and certificate of title for the subject property do not identify any easements on the lot. All other services are available to the site and can be extended to service the proposed new dwelling at the rear. A Survey Plan of the site is included under **Appendix A**.

| Address | Title Details | Site Area | Site Frontage |
|--|------------------|--------------------|-----------------------|
| 8 Walsh Street, North Narrabeen NSW 2101 | Lot 86, DP 11809 | 1,048 sqm (Survey) | 15.24 metres (Survey) |

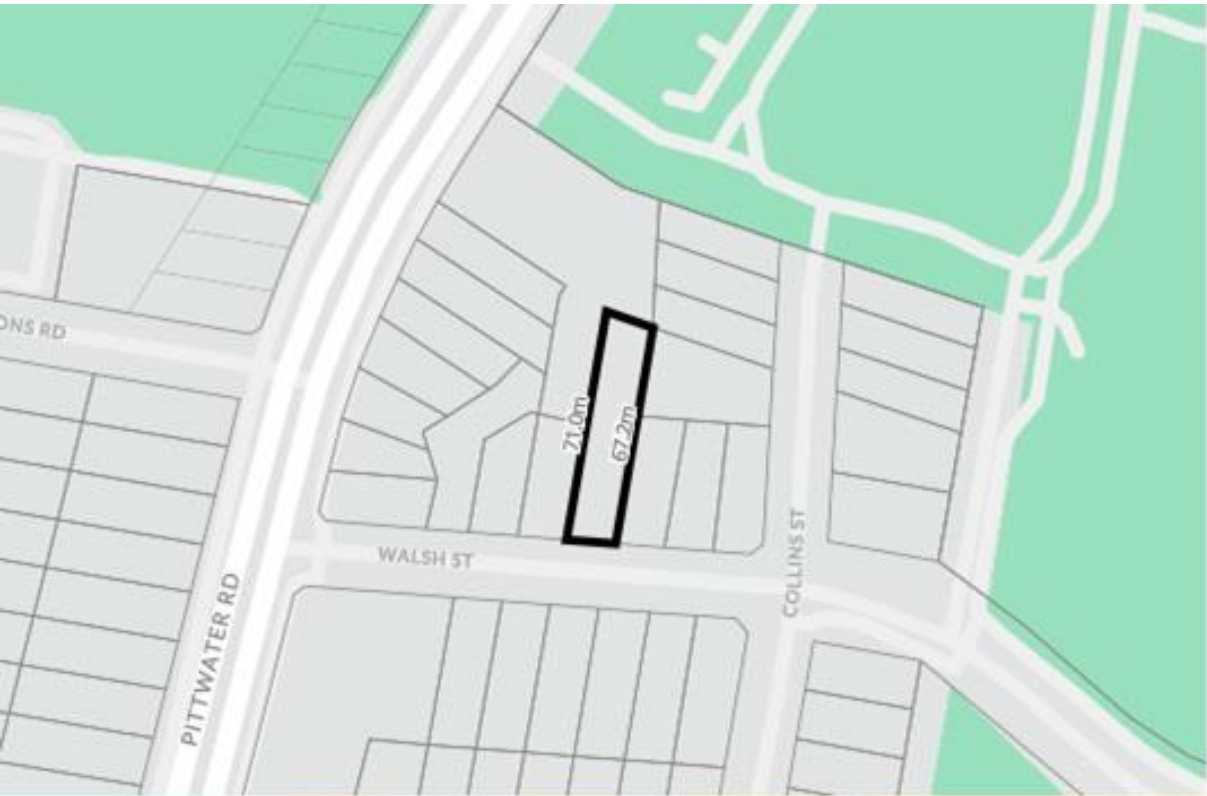


Figure 1: Site location (Source: Landchecker)



Figure 2: Site aerial (Source: Landchecker)



Figure 3: Google Street View

3.2 Proposed Development

It is proposed to undertake a one-into-two lot, Torrens Title subdivision to create two lots as follows:

| Address | Lot details | Site Area | Site improvements |
|----------------------------------|-------------------------|-----------|---|
| 8A Walsh Street, North Narrabeen | Existing Lot (Lot 1) | 523.9 sqm | Existing dwelling fronting Walsh Street |
| 8B Walsh Street, North Narrabeen | Proposed Lot (Lot 2) | 523.9 sqm | Proposed vacant lot accessed via right of carriageway across the existing Lot at 8 Walsh Street |

The proposed Plan of Subdivision plans is shown in **Figure 4** below.

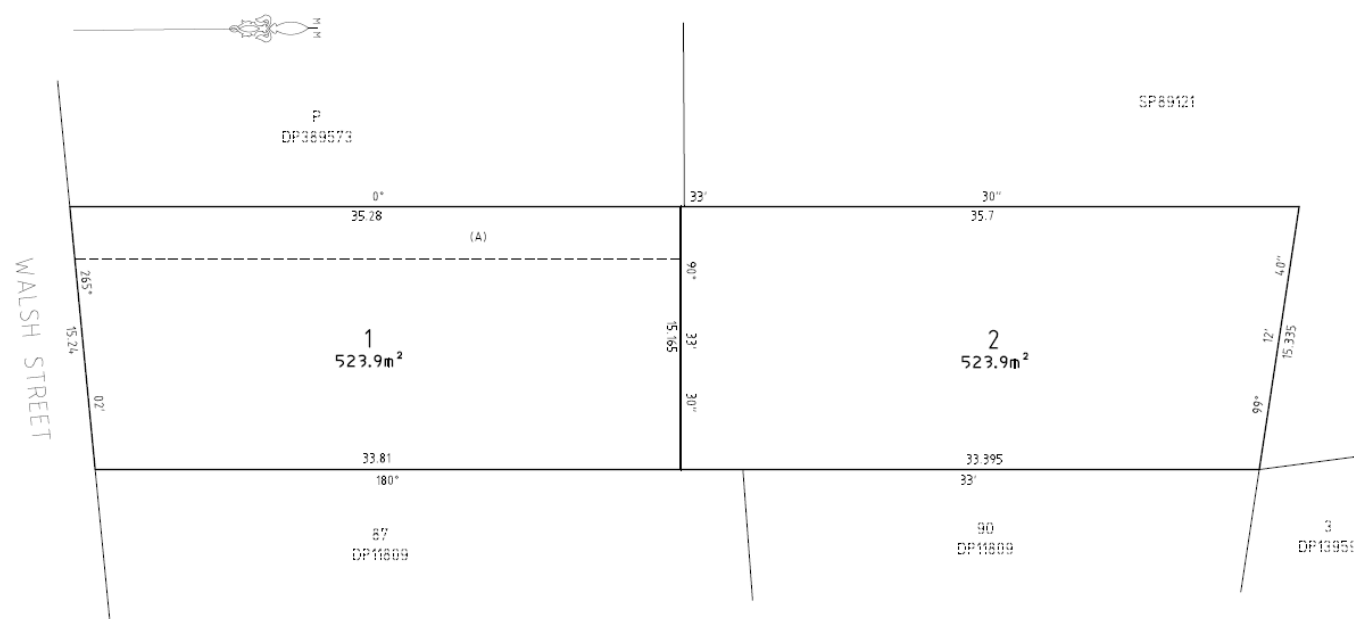


Figure 4: Proposed plan of subdivision (Source: Donovan Associates)

3.3 Context and setting

3.3.1 Context and setting

The area is dominated by single dwellings of modest scale. Housing stock in this location is predominantly a mix of face-brick and weatherboard with tile or steel roofing as shown in the following Google Street view images.



Figure 5: Google Street view – Walsh Street west to east



Figure 6: Google Street view – Walsh Street east to west

The presentation of the subject site to Walsh Street will not change as the proposed subdivision will retain the existing dwelling including the vehicular access and crossover from the street. A 3-metre wide, right of carriageway will be created along the driveway to provide access to the rear lot (Lot 2).

3.3.2 Privacy, Views, Overshadowing, and Noise

The proposed subdivision has been prepared to retain the existing dwelling, achieve private open space and suitable setbacks to minimise impacts on privacy, views, overshadowing and noise.

The rear lot will be able to accommodate a building envelope that meets best practice to provide sufficient area for a future dwelling and the residents with privacy and negligible impacts on views, overshadowing or noise to and from neighbouring receptors.

3.3.3 Access and Traffic

Access to the existing dwelling (Lot 1) will be provided using the existing crossover and driveway location from Walsh Street.

Access to the rear lot (Lot 2) is proposed via a right of carriageway utilising the existing access crossing and driveway location from Walsh Street.

3.3.4 Stormwater and Sewerage

Water, sewer, power and telecommunications are located in Walsh Street road reserve and can be connected to the rear lot via an easement in the location of the driveway and proposed right of carriageway. It is not considered that the proposal will result in an unreasonable increase on supply or demand relating to these services.

3.3.5 Ongoing Waste Management

Waste from the property will not change and residential waste from a future dwelling at the rear will be managed through the waste collection service without impact on the site, neighbours or the footpath.

4 Clause 4.6 Variation Assessment

4.1 Environmental Planning Instrument details

4.1.1 What is the name of the environmental planning instrument that applies to the land?

Pittwater Local Environmental Plan 2014 (LEP 2014)

4.1.2 What is the zoning of the land?

Low Density Residential Zone (R2)

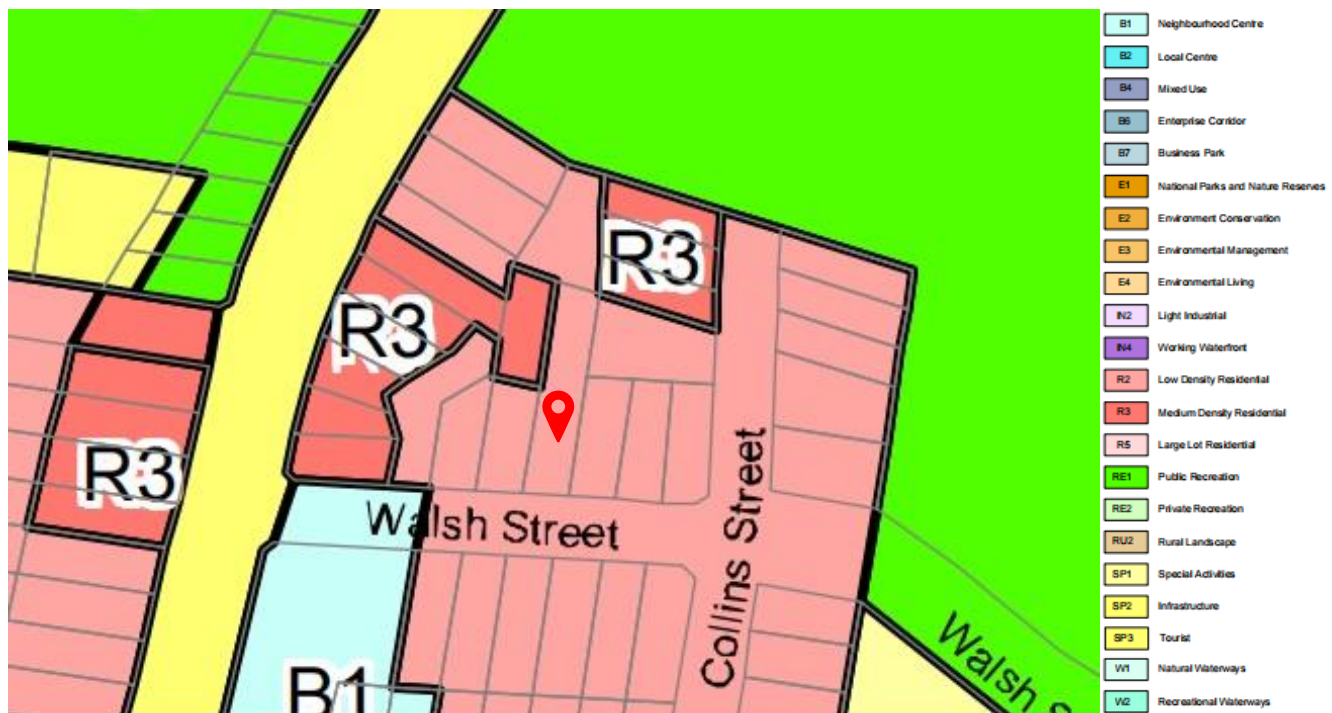


Figure 7: Pittwater LEP 2014 - Low Density Residential Zone (R2) – Ref: Map 19

4.1.3 What are the objectives of the zone?

- To provide for the housing needs of the community within a low 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 limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.

4.1.4 What is the development standard being varied?

Minimum subdivision lot size

4.1.5 Under what clause is the development standard listed in the environmental planning instrument?

Clause 4.1B, Subclause (3) – Minimum subdivision lot size. The Clause states as follows:

(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.

4.1.6 What are the objectives of the development standard?

- (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.*

4.1.7 What is the numeric value of the development standard in the environmental planning instrument?

550 sqm

4.1.8 What is proposed numeric value of the development standard in your development application?

523.9 sqm per lot (2 No. lots)

4.1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

4.7%

4.1.10 Does Clause 4.6 include a provision that would prohibit the application for variation of the development standard?

No. Clause 4.1 is not excluded under subclause (8) of Clause 4.6.

It is noted that the Pittwater LEP 2014 and Clause 4.6 (8) was formulated to deliberately exclude a number of development standards from flexibility facilitated by Clause 4.6. In other words, the consent authority and department considered that there were, in formulating the legislation, certain standards that should not be varied. This is of relevance therefore that the consent authority did not exclude the provisions under Clause 4.1 and accepted that there could be merit assessment for departure from the minimum standards.

4.2 Clause 4.6 Assessment – Minimum Subdivision Lot Size

The following section addresses the provisions of Clause 4.6 of the Pittwater Local Environmental Plan 2014 together with principles established in the NSW Land and Environment Court Case Law outlined above.

4.2.1 Clause 4.6(3)(a)

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, Way Number 1 established in **Wehbe** is considered and addressed as follows.

First Way

The objectives of the standard are achieved notwithstanding non-compliance with the standard.

The objective of the standard is:

The objectives of this clause [Clause 4.1] 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..*

It is considered that the proposal is consistent with the objective of the standard for the following reasons:

- Planned residential density can be reflected in the land use zoning classification as low density;
- Planned residential density can also be achieved by providing logical and thoughtful housing choice and affordability;
- Achievement of a permissible use and provision of a vacant lot which is suitable to achieve compliant future development in terms of lot size, building height, site coverage, landscaping, setbacks, provision of services, parking, access, private open space, pervious area and deep soil zones; and which supports the objective of planned residential density. The development has been designed, and demonstrated, to achieve each of these aspects, other than the minor minimum lot size non-compliance of 4.7%;

- The minor discrepancy between the minimum lot size and the actual lot size does not hinder the logical future development of the resultant vacant lot (Lot 2) consistent with the existing and likely future character and zoned residential density of the area.

For these reasons, it is contended that adherence to the 550 sqm lot requirement mapped for the subject site is unnecessary in this case due to the achievement of the objectives of the clause and positive environmental planning outcomes achieved by the proposed subdivision, notwithstanding the non-compliance.

4.2.2 Clause 4.6(3)(b)

Are there sufficient environmental planning grounds to justify contravening the development standard?

Strict compliance with the standard would hinder the attainment of the objects specified in Section 1.3 of the EPA Act, which are as follows:

- 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,*
- b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- c) to promote the orderly and economic use and development of land,*
- d) to promote the delivery and maintenance of affordable housing,*
- e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- g) to promote good design and amenity of the built environment,*
- h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- j) to provide increased opportunity for community participation in environmental planning and assessment.*

Compliance has been readily achieved with the following relevant objectives of the EPA Act:

| Environmental Planning and Assessment Act 1979: Section 1.3 | |
|--|--|
| Objective | Assessment |
| <i>c) to promote the orderly and economic use and development of land,</i> | This portion of the site would not be used to its full residential potential without the proposed redevelopment. As such, strict compliance with the standard would not allow this suitable development and preclude a positive residential outcome for the site and area. This would in turn prevent, not promote, the orderly and economic development of a sympathetic low density residential development. |

| Environmental Planning and Assessment Act 1979: Section 1.3 | |
|---|---|
| Objective | Assessment |
| d) to promote the delivery and maintenance of affordable housing, | The proposal will offer housing diversity to support affordable housing options in the North Narrabeen area. |
| g) to promote good design and amenity of the built environment | Notwithstanding the non-compliance with the minimum subdivision lot size, the proposed subdivision has been designed to comply with the Northern Beaches Development Standards and Controls (through the Pittwater LEP 2014 and the Pittwater 21 DCP 2004). The proposed subdivision is sympathetic to the character of the area and enhances onsite residential amenity without detriment to surrounding residential land uses in the locality. |

Strict compliance with Clause 4.1(3), Minimum subdivision lot size, of the Pittwater Local Environmental Plan 2014 would hinder the attainment of the objectives of Clause 4.1 on the basis that:

- As indicated above, the proposed subdivision creates a vacant lot (Lot 2) which is suitable to achieve compliant future development in terms of lot size, building height, site coverage, landscaping, setbacks, provision of services, parking, access, private open space, pervious area and deep soil zones; notwithstanding the non-compliance of 4.7% with the minimum lot size;
- Residential amenity and the environmental qualities of the North Narrabeen area will not be reduced by the development;
- The proposed subdivision does not prevent the ability to achieve a planned residential density, being the objective of Clause 4.1.

Considering the proposed design has suitably addressed all of the site-specific constraints, strict compliance with the minimum lot size for attached dual occupancies control would hinder the attainment of the objects of the Act, the standard and the R2 zone, and would not promote the orderly and economic use and development of land or a positive environmental planning outcome the site and area.

As demonstrated, there are sufficient environmental planning grounds to justify contravening this development standard in the unique situation of this site and this development.

4.2.3 Clause 4.6(4)(a)(ii)

Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out?

The proposed development is consistent with the objectives of the standard. An assessment of consistency with the objectives of the Zone is provided below:

| R2 Low Density Residential | |
|---|---|
| Objective | Assessment |
| <i>To provide for the housing needs of the community within a low density residential environment.</i> | <p>The proposed subdivision provides an opportunity for additional housing and diversity for the community in a low-density environment.</p> <p>The subdivision provides for a compatible infill subdivision within the low-density residential environment. The proposal provides an ecologically sustainable development type by retaining the existing dwelling.</p> <p>The proposed subdivision will be providing a smaller, more manageable lot for the existing dwelling, while creating a rear lot (Lot 2) suitable for the future development with a single dwelling.</p> |
| <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents</i> | Not applicable - The development is associated with a residential use. |
| <i>To promote residential development in locations that are accessible to services and facilities.</i> | The proposal is accessible to the services and facilities of North Narrabeen and surrounding areas. |
| <i>To ensure that development maintains and improves the character of residential areas in a manner that minimises impacts on existing amenity and environmental quality.</i> | <p>The proposal provides an ecologically sustainable development type by retaining the existing dwelling ensuring that the single dwelling presentation to Walsh Street is maintained.</p> <p>The proposed subdivision maintains the existing amenity, environmental quality, and character of this part of North Narrabeen.</p> |
| <i>To allow a range of non-residential land uses that are consistent with the predominant scale and height of adjoining buildings and do not unreasonably detract from the amenity of adjacent residents.</i> | Not applicable - The development is associated with a residential use. |

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard and objectives for development within the zone. Accordingly, there can be no quantifiable or perceived public benefit in maintaining the standard.

4.2.4 Clause 4.6(4)(b)

Is the concurrence of the Planning Secretary required, and if yes, has the concurrence of the Planning Secretary has been obtained?

In deciding whether to grant concurrence under Clause 4.6(4)(b), the Planning Secretary must consider under Clause 4.6 (5):

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning;*
- (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.*

In summary:

- The non-compliance will not raise any matter of State or Regional Significance;

- The proposed development is not contrary to the public interest, as detailed above; and
- The applicant is happy to address any other matter required to be considered by the Planning Secretary.

5 Conclusion

In summary, this Clause 4.6 variation request to the Minimum subdivision lot size in the Pittwater Local Environmental Plan 2014 satisfies the four tests imposed by Clause 4.6 being:

1. That compliance with the relevant development standard must be unreasonable or unnecessary in the circumstances of the case;
2. That there are sufficient environmental planning grounds to justify contravening the development standard;
3. That the applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3;
4. That the proposed development would be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the relevant zone.

Clause 4.1 sets minimum subdivision lot sizes for the area covered by the Pittwater LEP within the Northern Beaches local government area. The subject site at 8 Walsh Street has a site area of 1048 sqm, or 52 sqm or 4.7% short of this minimum.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, as the proposal complies with the *First Way* of the *Five Part Test* outlined in *Wehbe*, in that the objectives of the standard are achieved, notwithstanding non-compliance with the standard.

In considering the balance between technical development standard compliance or support for this request to vary the set development standard, it is submitted that, in the proposed form, this unique development and site can achieve the following positive environmental planning outcome/s:

- We have demonstrated that this site provides for a compatible infill subdivision within the low-density residential environment;
- The proposed dual occupancy supports the low-density residential character of the zone and provides an opportunity for future additional housing and diversity for the community;
- The development promotes smaller, affordable dwelling stock for the benefit of North Narrabeen residents;
- The proposal is accessible to the services and facilities of North Narrabeen and surrounds;
- The proposed subdivision will be providing a smaller, more manageable lot for the existing dwelling, while creating a rear lot suitable for the construction of a dwelling in the future; and
- The proposal maintains the existing privacy, amenity, environmental quality, and character of this part of North Narrabeen.

Accordingly, the positive outcomes of the departure from the standard outweigh the negatives which would result from strict adherence to the standard as set out under Clause 4.1 Minimum lot sizes for dual occupancies.

Importantly, it is considered that a precedent will not be set by supporting the proposed departure as this proposal is responding to the uniqueness of this site. Also, while strict adherence to the set development standard is desirable generally, on the merits of this specific case there is the opportunity to achieve a better environmental planning outcome on this site, through the development as proposed.

It is considered that this written request adequately addresses all relevant required matters. It demonstrates that the proposed development is in the public interest because:

- it is consistent with the objectives of the particular standard,
- it is consistent with the objectives for development within the zone,
- it is consistent with the aims of Pittwater Local Environmental Plan 2014, and
- it is consistent with the Objects of the EP&A Act.

On the basis of the above, the Northern Beaches Council is able to support the proposed variation to the development standard under the provisions of Clause 4.6 of the LEP and favourably endorse the Development Application as lodged.