

Clause 4.6 Variation Request Report

8 Walsh Street, North Narrabeen, NSW 2101 -
Lot 86, DP 11809

Development Application for:
Retention of existing dwelling and one-into-two lot subdivision

Applicant: Damian Spinks and Lisa Joanne Spinks

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Created By:	TVD
Checked By:	

1 Introduction

Council Approval Group has been engaged by Damian and Lisa Spinks to prepare and submit a Development Application for a proposed one-into-two lot Torrens title subdivision at 8 Walsh Street, North Narrabeen. Once determined, this proposal will retain the existing dwelling on the front lot (Lot 1) and create a residual vacant lot (Lot 2) at the rear of 8 Walsh Street, North Narrabeen.

The purpose of this report is to request a variation from the minimum lot size standard.

2 Clause 4.6 Variation Assessment

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

Pittwater Local Environmental Plan 2014 (LEP 2014)

2.2 What is the zoning of the land?

Low Density Residential Zone (R2)

2.3 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.*

2.4 What is the development standard being varied?

Minimum subdivision lot size

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

Clause 4.1. Subclause (3) and s(A)– 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.

(3A) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.

2.6 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.

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

550 m²

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

The proposed lots will be less than the minimum lot size standards as follows:

- Proposed Lot 1 will be 437.95 m² excluding the 110.16 m² access handle and 548m² including 110.16 m² access handle.
- Proposed Lot 2 will be 500m²

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

The % variation is approximately 20% for proposed Lot 1 and 9.1 % for proposed Lot 2.

2.10 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.

2.11 Provide site specific reasons to justify the contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the particular circumstances of the case?

The subject site is 1048 m² and surrounded by much smaller lots. The current size of the site is significantly out of character with the surrounding smaller lot pattern. The existing lot size is out of context with the residential character and amenity and smaller lot pattern, size and configuration of existing lots in the locality. In addition a multi dwelling housing development has been approved and is located directly to the north west of the site, developed to a much higher density than what is proposed as part of this one into two lot subdivision.

A few examples of smaller lot sizes, surrounding the site are provided in Table 1 below and the location of these lots are shown in figure 1 below:

Table 1	
Address	Approximate size
4 Walsh Street	417 m ²
1456 Pittwater Road, North Narrabeen	382 m ²
1458 Pittwater Road, North Narrabeen	394m ²
44 Collins Street, North Narrabeen	488m ²



Figure 1 – Number 8 Walsh Street is highlighted in blue and examples of surrounding smaller lot pattern is evident marked in red.

Compliance with the development standard is unreasonable or unnecessary in this instance as all the relevant residential Pittwater DCP standards can be complied with, with specific reference to provision of :

- a building envelope of 175 m² on each lot;
- 80 m² private open space and 16 m² principal private open space;
- compliant boundary setbacks;
- car parking and vehicular movement;
- compliant landscaping areas.

In this particular circumstance it is unreasonable or unnecessary to comply with the minimum lot size development standard of 550 m² as the proposal has achieved the objectives for subdivision as stated below and therefore compliance with the standard is unreasonable and unnecessary .

4.1 Minimum subdivision lot size (1) The objectives of this clause are as follows—	Statement of 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,	<p>The site area of 8 Walsh Street is much larger than surrounding lots and is out of character with the surrounding lot pattern and currently contravenes this LEP objective for minimum subdivision lot sizes. Approval of the proposed development will result in 2 lots that are more consistent with the surrounding lot pattern.</p> <p>One shared driveway is proposed that will serve both lots. The proposed lot configuration will have no impact on the streetscape or character of the street.</p> <p>Residential amenity and the environmental qualities of the North Narrabeen area will not be reduced by the development;</p> <p>The proposed subdivision does not prevent the ability to achieve a planned residential density, being the objective of Clause 4.1.</p>
(b) to provide for subdivision where all resulting lots are capable of providing for the construction of a building that is safe from hazards,	<p>Both lots can provide for a 175 m² building envelope and facilitate construction of a suitable future dwelling on the rear lot .</p> <p>The proposed dwelling on the rear lot can be built above any flood levels.</p>
(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	The site is not listed as heritage item or conservation area
(e) to provide for subdivision where all resulting lots can be provided with adequate and safe access and services,	Adequate safe access can be provided via the existing driveway that will be shared.
(f) to maintain the existing function and character of rural areas and minimise fragmentation of rural land,	Not relevant
(g) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.	<p>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 20 % for proposed Lot 1 and 9.1 % for proposed Lot 2 .</p> <p>All relevant Pittwater DCP standards can be complied with, with</p>

	<p>specific reference to:</p> <ul style="list-style-type: none"> • building envelope of 175 m² on each lot; • 80 m² open space and 16 m² principal open space; • Boundary setbacks; • Car parking and vehicular movement; • Landscaping areas
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The proposed development is consistent with the objectives of the standard. An assessment of consistency with the objectives of the R2 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.

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

The proposed retention of the existing dwelling and one into two lot subdivision will result in the efficient use of scarce resources and have a reduced impact on the environment compared to what could be permissible on the site under complying development.

For example an alternative to this development will be a dual occupancy and subdivision under SEPP 2008 - Low Rise Housing Diversity Code. Such a development will require demolition of a perfectly suitable and liveable dwelling house with subsequent unwanted waste ending up in the environment as land fill. Such a development will also result in two very long narrow blocks of land where each new dwelling cannot achieve the same amount of solar access to living areas, visual and acoustic privacy.

The proposed one into two lot subdivision retaining the existing dwelling will result in a much better environmental and planning outcome, preventing demolition waste and achieving more liveable future dwellings for the enjoyment of its residents. Departure from the minimum lot size standard of 550 m² is therefore justified.

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:

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.
<i>d) to promote the delivery and maintenance of affordable housing,</i>	The proposal will offer housing diversity to support affordable housing options in the North Narrabeen area.
<i>g) to promote good design and amenity of the built environment</i>	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.

2.13 Is the proposed development in the public interest? Is it consistent with the objectives of the standard and zone?

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.

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;
- Both lots will be 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 minor discrepancy between the minimum lot size standard and the proposed lot sizes 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 m² lot requirement mapped for the subject site is unnecessary in this case due to the achievement of the objectives of the standard and positive environmental planning outcomes achieved by the proposed subdivision, notwithstanding the non-compliance.

3 Conclusion

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 m² and departure from the minimum lot size standard is required as follows:

- approximately 20% for proposed Lot 1; and
- 9.1 % for proposed Lot 2 ;

In conclusion:

- This site provides for a compatible infill subdivision within the low-density residential environment;
- The proposed subdivision 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.