

Local Planning Panel – 107 Iris St Beacon Hill

Applicant Submission

Maree Jaloussis Hayes

**107 Iris Street
Beacon Hill NSW 2100**



107 Boundary from the vertical Stormwater pipe on the left to the right brick driveway bollard on the right (35mts frontage).

Date:

13 Dec 2023

APPLICANT

Maree Jaloussis Hayes

PROPOSAL DESCRIPTION

Proposed Torrens Title Subdivision of 1 lot into 4 lots.

PRIOR PRE-DA MEETING

PLM 2022/0204

LOT Plan Number: 1

8 / DP19022

DA Number

DA2023/0379

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1. Executive Summary

Our proposed Sub Div is for a 4 lot Sub Division is across a 2255m² lot.
Each lot including the access handles is on average approx. 563m².
Each lot not including access handles is on average approx. 486m².
(Plans on Pages 4 & 5)

Each lot meets all other standards including the standard width of 13mts and depth of 27mts.
Our blocks on average are 16mts and 32mts.
And minimum block size of 150m²
They all also meet the 40% landscaping rule.

The pre-DA team felt that a 4 lot SubDiv was the best configuration to match the area's pattern regardless of the smaller lot sizes (page 6).

The Local Housing Strategy and multiple Ministers of parliament (including the Planning, Housing and the Local Government) are calling for more varieties of housings near infrastructure. (Pages 8 & 9)

The Pattern, Size and Configuration is significantly similar to that of our direct neighbours on the same total lot size as ours (pages 10-13).

When you look at the double lots (similar to the allotment of 107) adjacent to either side of 107 you can see that one is slightly larger and one is slightly smaller than the total of 107. Both houses and (soon to house) have 4 dwellings on one side and 4 dwellings on the other. This highlights the consistency with the nearest locality pattern. (page 10-13)

There is no other reasonable option for our lot, that meets with the pattern, size and configuration of the area. (page 14).

Our lot sizes are only this small due to the driveway size.

Providing a driveway for Lot 1 would actually remedy this situation and would bring the lot sizes closer to the standard. There are no driveways opposite for almost 100mts, so there are no bulk driveway issues in our area of the street. This is something we would like considered as a remedy to the lot size (page 15).

It can be seen by the Landchecker map that it is certainly not inconsistent in the area to have lots that are less than 539mt². (Page 16).

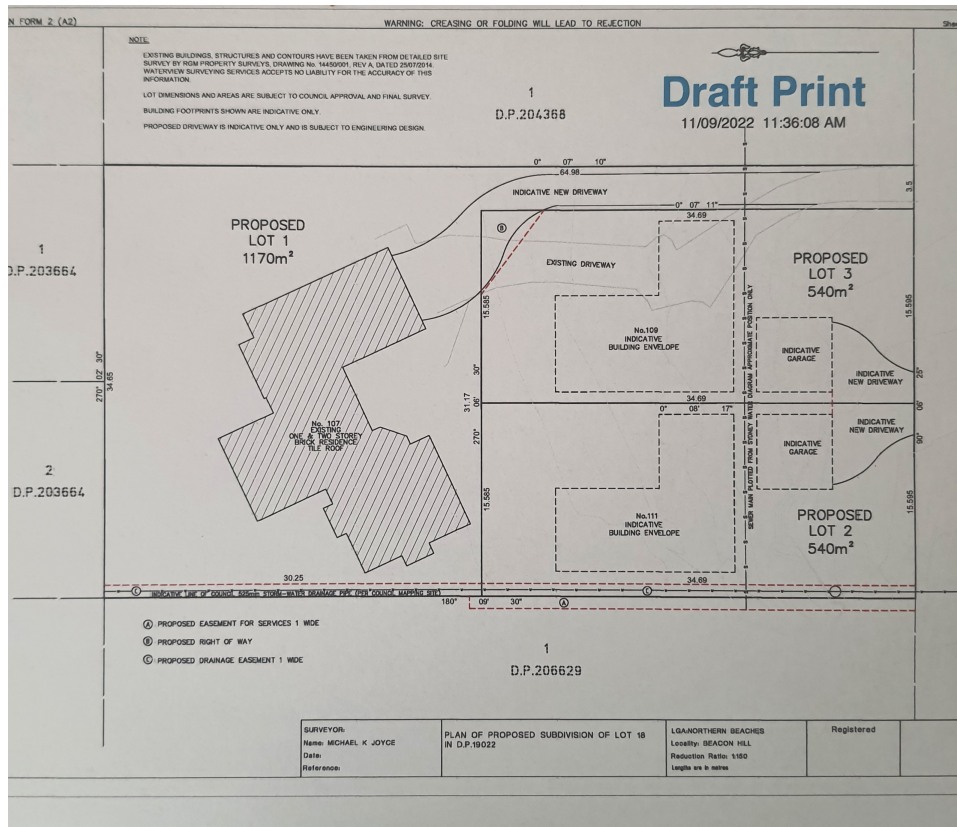
It is in the **Public Interest** to have smaller more affordable housing to assist in repairing the housing crisis and also ensuring essential jobs are filled by workers whom are part of the community: (page 17)

- *“promotes the overall well-being, safety, and sustainability of the community*
- *considerations that benefit or impact the broader community*
- *achieve a positive outcome for the community as a whole.”*

2. Background

Thank for your reviewing our submission.

My husband and I started out 4 years ago thinking that we would do a 2 Lot subdivision but after a knock back on various issues decided it would be best to have a smaller house and lot with less to look after so we held a pre-DA in Nov 2022 and asked to put a 3 lot subdivision which would be 2 lots at the front of our 2254m² block, where the existing house takes up the back 1000ish m².



This met the minimum lot sizes within the variation but the Council felt that the blocks, being uneven in total were not a desirable outcome to the standard configuration of 4 even lot sizes. As a result Council requested that

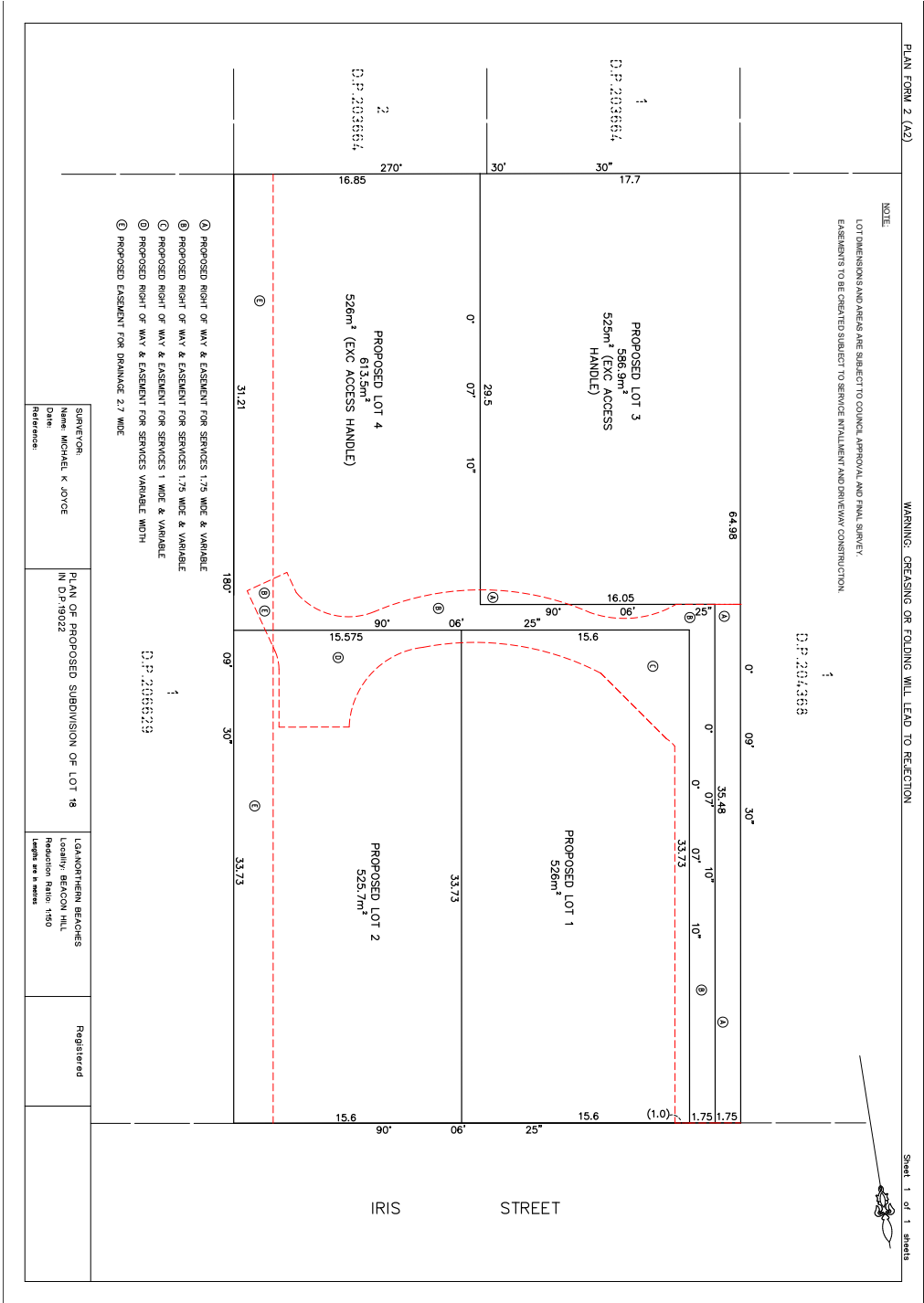
Concluding Comments – (Page 12 of the Pre-DA Notes Dec 2023)

“Council recommends that a four (4) lot subdivision of 107 Iris Street would result in the most desirable planning outcome for the future of the site and would be in keeping with the surrounding character and subdivision pattern of Iris Street and Oxford Falls Road”

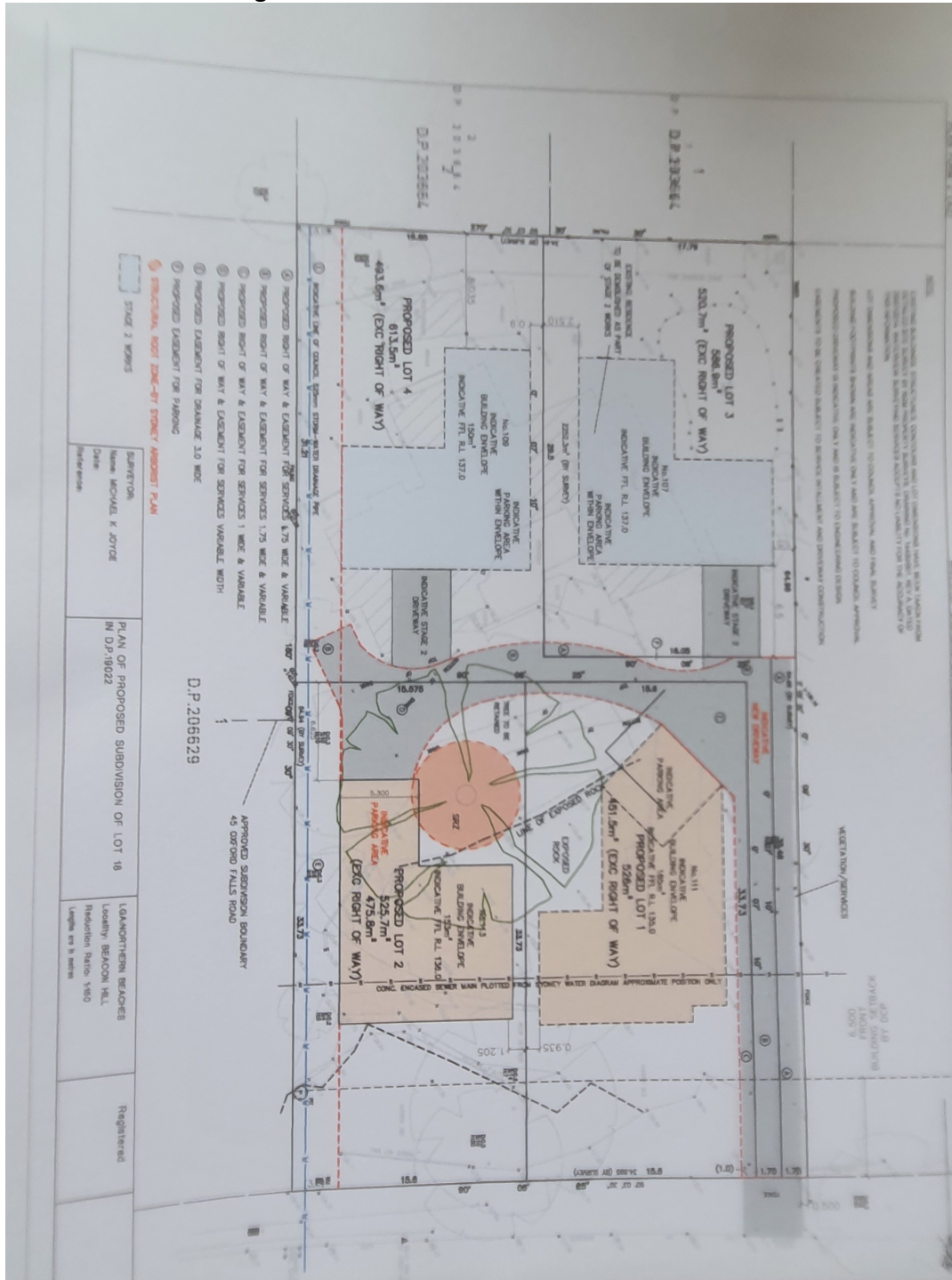
3. Sub Division Plan

So we have gone ahead and spent 10s of 1000s on following this, what seems like the most sensible, logical format for the access of this block and most importantly suggested as the best option by Council.

We realize they are undersize but feel that throughout Beacon Hill the sizing varies greatly and there are actually many properties similar to the sizing of our blocks, of which we’ve provided examples within this document.



Stage 2 would comprise of Lots 3 and 4 and the rear of the site. The staged approach allows the original residence to remain until Stage 2 is enacted. Stage 2 would be implemented within 5 years. This would include a Building Proposal being lodged for the rear of the property thus replacing the existing dwelling with two new dwellings.



3.1 Northern Beaches Council Pre-Lodgement Meeting

Meeting Date: 8 November 2022

Application No: PLM 2022/0204

Property Address: 107 Iris Street and 45 Oxford Falls Road BEACON HILL

Attendees for Council: Daniel Milliken, Penny Wood, Aarti Kaila and Kevin Fernando

Attendees for applicant: David Hoare, Maree Jaloussis Hayes (owner of 107 Iris Street), Jiri Albrecht (Owner of 45 Oxford Falls Road), Michael Joyce, Michael Koreke, Stephen Wylie.

We invite our neighbours to join the Pre-DA meeting as they had a submission in Council already and wanted to see if we could share the services going in and later suggested sharing driveway to their place as their existing option was onto the round about at the front.

The following are some excerpts from the meeting relating to the lot size variation request relating to the subject site.

4.1 Minimum subdivision lots size.

"It was discussed on site with the Applicant, Council could support the variation to the proposed undersized lots given the existing subdivision pattern and recently approved subdivision proposals along Iris Street and Oxford Falls Road."

Whilst this would result in four (4) undersized lots, Council could support a four (4) lot subdivision at 107 Iris Street"

It is my understanding that Daniel Millikan is an experienced Planner and Pre-DA manager and he felt that a 4 lot sub division option would fit in with the existing sub division pattern in Iris St and Oxford Falls Road.

4.6 Variation

"A Clause 4.6 Variation would be required to address the variation to Clause 4.1 Minimum Subdivision lot size under Warringah Local Environmental Plan (WLEP) 2011."

As was also stated by the Pre-DA team whilst on the site that day they all commented that as opposed to reviewing properties from the desk ***" it was good to be on site particularly with this site as you get a much better perspective with the street facing rock faces and the only one option access to the whole block due to them"***.

4 Infrastructure within 100mts and 3kms

List of local infrastructure within 3kms to 107 Iris Street, Beacon Hill *includes;*

Within 100 meters

- Bus stop to Chatswood and Manly

Within 500 meters

- Bus stop to the City, DY, Manly and Chatswood

Within 1km

- Skyline shops (includes chemist, subway, takeaway food stores, soon to be IGA, KFC)
- Allied health services (physio etc)
- Industrial park with multiple businesses
- Greenwood Early Childhood facility
- Cheerleading school
- Beacon Hill Primary School
- Oxford Falls Grammar Primary and High School
- Tennis facilities
- 2 x Children's public play parks
- Ben Love Oval
- Forest Hotel
- Soon to be Bunnings
- Virgin gym

Within 2kms

- Northern Beaches Hospital
- Forest High School
- Community hall (gymnastics, karate, exercise classes and more held there)
- Soccer & Basketball Playing fields
- Many medical specialists
- Many allied health specialists
- Pathology services
- Aged care facilities
- Over 55s facilities at Allambie Heights

Within 3km

- Forestway shops (Woolies, Aldi, Takeaway food outlets, coffee shops, bottle shop and more)
- Westfield Warringah Mall.
- Brookvale main road shops and services
- St Augustine's
- Brookvale primary school
- Northern Beaches largest industrial area
- Officeworks
- DY Shops & Narrabeena shops

This highlights that the lot is located well within the local services all within less than 3kms being perfect for any stage of life and within the Public Interest that 'provide livability of the area.' See page 18.

5 Updated directions by LHS, Ministers for Planning, Housing and Local Government.

Below is evidence from the Local Housing Strategy (LHS) to the current Minister calling for the increase in housing in areas close to local infrastructure.

5.1 Northern Beaches Local Housing Strategy (LHS)

Executive Summary - excerpt

This Northern Beaches Local Housing Strategy (LHS) looks at the mix of housing in the Northern Beaches Local Government Area (LGA) today, and at the kind of housing that will be needed in the future.

New housing will be focused in and near centres where people can easily access public transport or walk or cycle to shops and services.

*The Northern Beaches will be home to a population of 288,431 people in 2036, an increase of 22,963 people from the 2016 Census. **We need to plan for about 12,000 new dwellings by 2036.** Of course they all add up over time.*

5.2 Excerpts: various Ministers most recent announcements on planning and housing.

Below is an excerpt from this
28 November 2023.

<https://www.planning.nsw.gov.au/news/new-planning-rules-fast-track-low-and-mid-rise-housing>

Minister for Planning and Public Spaces Paul Scully (soon to be Minister for Planning, Housing and Infrastructure from 1/1/2023) said:

“We’re confronting a housing crisis so we need to change the way we’re plan for more housing, we can’t keep building out we need to create capacity for more infill, with more diverse types of homes.

“Diversity of housing allows people to stay in their communities and neighbourhoods through different stages of their life, with family and friends able to live nearby. More housing choice means more options for everyone – renters, families, empty nesters. ...” On 28 November 2023

The offspring of many Northern beaches families have to leave the area, as they cannot afford to stay here. We need more housing on smaller blocks to allow for family growth and families to stay together. This would seem to be in the Public Interest*.

****Public Interest Definition as per Chat GPT***

‘In the context of Local Environmental Plans (LEP) and Development Control Plans (DCP), the term "public interest" generally refers to **considerations that benefit or impact the broader community rather** than individual or private interests. **Decisions made in the public interest aim to promote the overall well-being, safety, and sustainability of the community.**

For example, zoning regulations or development controls in an LEP or DCP may be implemented to **ensure public safety, protect the environment, or enhance the overall liveability of an area.** Decisions based on the public interest often involve balancing various factors to achieve a positive outcome for the community as a whole.’

On 17 October 2023

<https://www.planning.nsw.gov.au/news/minns-government-identifies-significant-gap-approval-density>

"It's surprising and disappointing that housing types synonymous with Sydney's housing past are not permitted to be part of Sydney's housing future, because of local planning rules.

"I will be writing to councils whose LEPs presently do not permit terraces and small apartment blocks in these residential zones, to make it clear that these types of houses are critical to address the housing crisis.

"We want to make infill housing a priority. It's cheaper to deliver and better for the environment.

"More housing in existing suburbs gives young people, especially, a choice to live near their parents - not be forced to live with their parents."

"It also saves essential workers from having to travel long distances to get to centrally located places of work, like hospitals and schools.".. On 17 October 2023

Again the Minister, Paul Scully is calling for more housing near infrastructure.

...

Below on 10 Oct 2023,.

<https://www.planning.nsw.gov.au/news/new-da-withdrawal-guidelines-councils-boost-housing-supply>

Minister for Local Government Ron Hoenig said:

"It's beyond belief that more than 9000 DAs have been withdrawn since July 2021 and it's definitely not acceptable in the middle of a housing crisis.

"I'm concerned there may be instances of councils asking applicants to withdraw applications rather than assessing them, in a bid to reduce their DA processing timeframes.

"Council staff should make every effort to resolve issues before asking applicants to withdraw DAs, which can ultimately lead to less housing stock.

"We need to increase our housing supply in NSW, and we need to act now to speed up the DA process.

"Councils have a critical role in the planning process and we need them to work with us to get more people into homes sooner across our state."

Minister for Housing Rose Jackson said:

"The only way we're going to get people off the housing waitlist is by getting them into homes. We need to do everything we can to expedite the delivery of more housing. On 10 October 2023

In this Press Release all 3 Ministers expressed their desire for increased housing and how councils can assist in achieving this for the public interest. Ensuring essential workers, retail service workers etc can live closer to where they work. Thus providing a variety of housing.

6. Pattern and Configuration of locality

6.1 Immediate Locality is Consistent with Proposed 107 Sub Div Pattern & Configuration.

The proposed pattern and configuration proposed for 107 Iris Street is actually **consistent** for the area in our nearest vicinity.

(This can be seen on the map below...please note this is upside compared to the other photos.)



We are only requesting the same as the 4 properties on either side of 107 Iris as explained below.

The same allotment total size to the left of us 105, 103 & 103A is 2273m² is partial sub-divided with 4 dwellings.

And to the right of us at 45, 45A (soon to be), 43, 14a is 2236 m² is fully sub-divided into 4 (the 4th still to be titled at LTR).

Compared to the proposed 107 Iris st allotment size of 2256m² is in between both.

This clearly indicates that if 107 was able to be sub-divided in the same format with driveways that the lot sizes would be Very Similar.

(Please note: I've turned this map around to fit with the street direction photos included in the document)



6.2 To the Right of the Proposed 107 sub division.



105 (left photo) at 1141m² approx. half the size of 107 Iris, although is not subdivided has 2 dwellings (1 being a 2 bedroom Granny flat, the front building). It's very open with little landscape vegetation.

Due to the granny flat rules it is located within meters of the existing house. If you were to draw a line between them it would be in the exact same place as the 107 proposed Sub Division.

This would make the lots if ever sub divided approx. 570m² each however, this number includes their currently shared driveway (which 107 does not).

103 & 103a Iris (right photo) have been sub divided and has a shared driveway between **103 (675m²)** and **103a (447m²)** at the back combined they total size of approx. 1122m².

The local nurse and policeman who recently bought this smallest lot would not have been able to so had it been a bigger more expensive block.

(Please excuse some recent photos as my camera lens is awaiting repair.)



Regardless of when this sub division was done the size, pattern and configuration of these properties, our direct neighbours (which combined is only 20m² larger than ours) **has a similar proposed offering and yet as seen here still provides a generally mild nature landscape feel to the street as per the LEP. One bushy and one not.**

Yet our proposed DA provides the benefit to the street of reducing 4 driveways into 1 coming onto the street and will maintain the beautiful Beacon Hill approach from Oxford Falls with the rock escarpment which is being kept.

Also a benefit and massive bonus to 105 as it will never have houses butting up against a 900mm boundary of the fence as the new driveway as with the similar existing driveway will always provide a buffer right up along half of the north/south boundary. An added bonus to our neighbours at 105.

6.3 To the Left of the Proposed 107 sub division.

The recently approved Sub Division on the left side of 107 at 45 Oxford Falls Road (OFRd) has lot sizes of 540 as the driveway which will be on roundabout as per 43 is included in the lot size. Making a difference of at least 20m²

They will be taking out part of the existing house to make this happen at 540m² but **if the driveway was not included in the lot size because like ours it would likely come under similar sizing.**

43 OFRd at 569m² with a driveway at the front would be a similar size if the driveways weren't included.

14a Dareen St, which sits behind 43 OFRd is 547m²



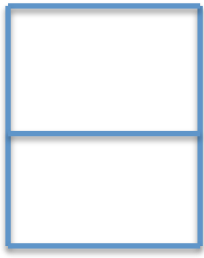
The bushy front right lot is 45 Oxford Falls road. With the DA for sub div is approved. House plans currently being designed.

We plan to work together with 45 OXF Rd, to create buildings that are as sympathetic to the environmental landscape as 43 OXF rd (above) is.

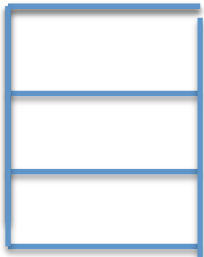


The new house is still to be built above the rock face on 45 Oxford Falls Road with landscaping at the bottom similar to 43 Oxford Falls Road. (on the left here)

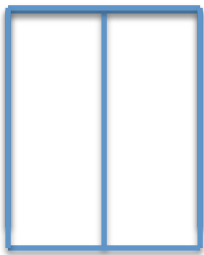
7. Pattern and Configurations Options



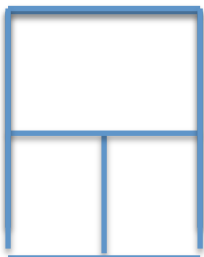
This pattern is actually nowhere on the street or surrounding streets unless a one-off.



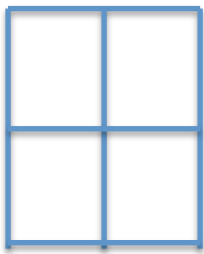
According to all this would give bad housing and design outcomes with a western/ driveway facing 'piggy in the middle' dwelling etc. It also doesn't fit the standard street pattern of a horizontal and vertical lines boundaries and is out of character with area.



This is not doable due to council not wanting street access to the left hand block due to closeness to the round about and also impacted by a 3mts rock face escarpment.



We first took this to the DA but council stated that they wanted even lot sizes in line with existing pattern and configurations of the street.



Which leave us with the only format left and one that is consistent in the surrounding neighbourhood whether backed onto another street or on the same street as shown in the following map. It's also consistent in dwellings/subdivisions on both our left and right neighbours.

It's my humble opinion that it therefore seems **unreasonable and unnecessary** in this instance to follow the standard.

8. Size

8.1 Proposed Individual Lot Sizes of 107 Iris Street.

Lot 1: 452 m² (24.8% below the standard but with the access handle included 526mt)

We would have preferred that this property have it own driveway straight off the street, to reduce traffic on the private driveway which is doable especially as there are not driveways opposite and never will be due to the cliff drop off.

We feel this would be a fair Condition as it would also reduce the traffic on the proposed driveway plus it would reduce the size of the Driveway. In the DCP (once it goes to from 3 to 4 lots the driveway has to be wider, which has also considerably impacted our lot sizes.

Plus there would be no need for a back garage on the corner of the access turn for Lot 1.

If the LPP feels they need an option to meet size this could maybe be considered.

Lot 2: 476 m² (20.7% below the standard but with the access handle included 526mt)

Lot 3: 521 m² (13.2% below the standard but with the access handle included 587m)

Lot 4: 494 m² (17.7% above the standard but with the access handle included 614m)

(We've rounded these off to the nearest meter for ease of reading).

Whilst they may seem a lot below the standard when you look at the percentage there are hmany examples of lots in our Beacon Hill area that are under the minimum lot size variation of 539m.

There are actually 433 lots in Beacon Hill alone.

In the general Northern Beaches 600m2 lot standard there are thousands.

The biggest zoom I could get is our general locality (on the next page).

8.4. WLEP 2011 -CLAUSE 4.1 Minimum subdivision lot size

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

(a) *to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,*

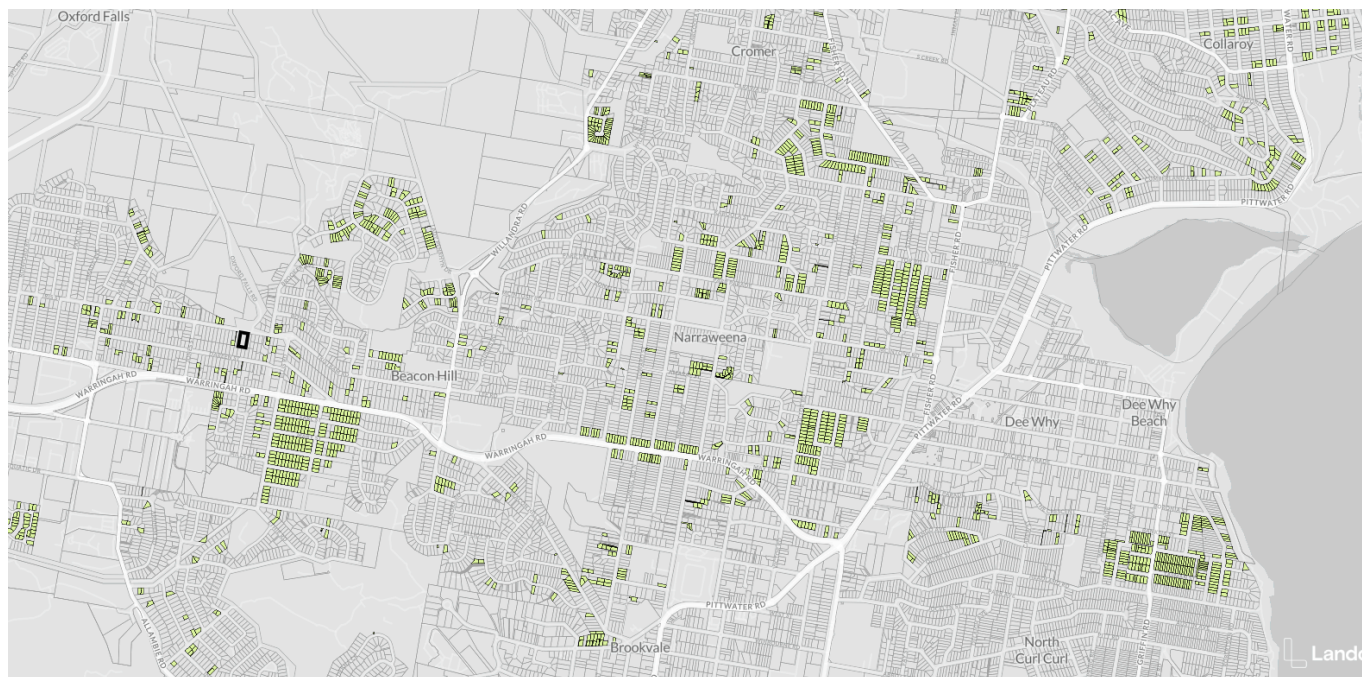
The existing site is large in surrounding locality.

It is considered that the subdivision proposal would result in lots that **are consistent as seen below with the pattern, size and configurations of the existing locality along Iris Street, Beacon Hill and surrounds.**

As can be seen below in GREEN are the lots sizes in the area that are well below the 600m² min standard.

This map shows in green the properties under 539m² but in the 600m²

(NB at the bottom are Curl Curl and DY where the minimum lot sizes are not 600m²)



(Ref: Landchecker.com.au. Lots under the variation maximum being less than 539m²)

The R2 low-density character would still be maintained with the subdivision pattern of the lots providing for the housing needs of the community in a low-density residential environment within the harmonious landscape settings of the natural environment of Warringah as seen by the photos show on either side of the property some are bare of landscaping and others are full of bushy landscaping.

9. Public Interest

**Public Interest Definition as per Chat GPT*

'In the context of Local Environmental Plans (LEP) and Development Control Plans (DCP), the term "public interest" generally refers to considerations that benefit or impact the broader community rather than individual or private interests. Decisions made in the public interest aim to promote the overall well-being, safety, and sustainability of the community.'

For example, zoning regulations or development controls in an LEP or DCP may be implemented to **ensure public safety, protect the environment, or enhance the overall liveability of an area**. Decisions based on the public interest often involve balancing various factors to achieve a positive outcome for the community as a whole.'

The subdivision is also in the public interest, as it would importantly provide an increase of available residential sites in this desirable location for

- Doctors and specialists in the area wanting to downsize into a new home.

The site would be able to accommodate four (4) dwellings in lieu of one (1) currently.

These site lots would aid in fulfilling a demand on the Northern Beaches Council area for dwelling sites especially for essential and ancillary medical and maintenance workers as per the example of one of our nearest neighbours on a 481m² block on 103A.

They love it also as they work hard and it's less area to look after but still room for 2 kids to run around. The access handle also creates community, with the other family, who also have 2 young children.

This more affordable housing reduces long trips to and from work therefore increasing the safety of workers in the community. They would also be more likely to stay in the job if it was closer to home thus increasing the sustainability of job tenure.

These smaller less expensive lots compared to others in the area would be more affordable to people whose jobs fit into the essential workers category below and of whom businesses struggle to fill jobs for.

- medical staff
- police workers
- allied service workers
- care workers
- retail service workers
- aged care workers
- café staff
- factory workers
- tyre fitters
- mechanics
- child care workers

So it is really is in the **Public Interest that these jobs are filled for the effective and functional running of our community. Ensuring all age groups within our community are catered and tendered to.**

There are many benefits to our proposal with only the issue of size being the biggest that Council standards have, which has been demonstrated in mapping for smaller lots to be consistent in our area.

Overall this development provides better wellbeing and a more livable community as a whole.

The General Manager
Northern Beaches Council 725
Pittwater Road
DEE WHY NSW 2099

12 December 2023

REVISED REQUEST UNDER CLAUSE 4.6 WLEP 2011

(Reviewed by Mills Oakley, Planning & Environment Division)

Property: 107 Iris Street Beacon Hill
Proposal: Torrens title subdivision – One lot into four.
DA No: DA2023/0379
Lot No./Plan: Lot 18 Deposited Plan 19022
Site Area: 2,254.8m²
Zoning: R2 – Low Density Residential - Warringah Local Environmental Plan 2011
Development Standard: Minimum Lot Size – Clause 4.1(3) WLEP 2011.

1 Introduction and Minimum Lot Size Standard

This Revised Request has been prepared in accordance with Clause 4.6 of the Warringah Local Environmental Plan 2011 ('LEP') to accompany the Development Application. The Development Application seeks consent for the Torrens Title subdivision of the existing lot into four at 107 Iris Street, Beacon Hill ('Site').

Clause 4.6 requires that a consent authority be satisfied of three key matters before granting consent to a development that contravenes a development standard. These three matters are detailed below:

1. That the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
2. That the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.
3. That 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.

This Clause 4.6 variation has been prepared in accordance with the requirements of Clause 4.6 of the WLEP 2012. It considers the various planning controls, existing characteristics of the Site, and demonstrates that compliance with the development standard 'is unreasonable or unnecessary in the circumstances of the case'.

Further, this Request has demonstrated that there are 'sufficient environmental planning grounds to justify contravening the development standard'.

2 Site and Proposed Variation

The Site is located on the southern side of Iris Street between Ellis Road to the east and Jones Street to the west. It has 34.695m frontage to Iris Street and an average depth of 65m. The Site falls from the rear to the front with a level difference of approximately 11.3m. The Site is rectangular in shape and has a total area of 2,254.8m².

Lots in the vicinity of the Site vary considerably in area and shape and support both single and two-storey detached dwellings and dual occupancies. The dual occupancy subdivisions are as low as 252m², for example, 35 Oxford Falls Road. The existing lot is large and inconsistent with the surrounding subdivision pattern. Refer to Figure 1 below.

The proposal seeks approval for the Torrens title subdivision of the site into 4 allotments (as recommended in the Pre-DA meeting with Council), in order to maintain regular lot shapes even if smaller lot sizes resulted.

The proposed subdivision lot sizes and numerical variations are as follows:

Lot	Proposed Area (excluding access handle) (Sqm)	Deviation from 600 Sqm
Lot 1	451.5	24.7%
Lot 2	475.8	21%
Lot 3	520.7	13.2%
Lot 4	493.6	17.7%

Table 1: Proposed lot areas.

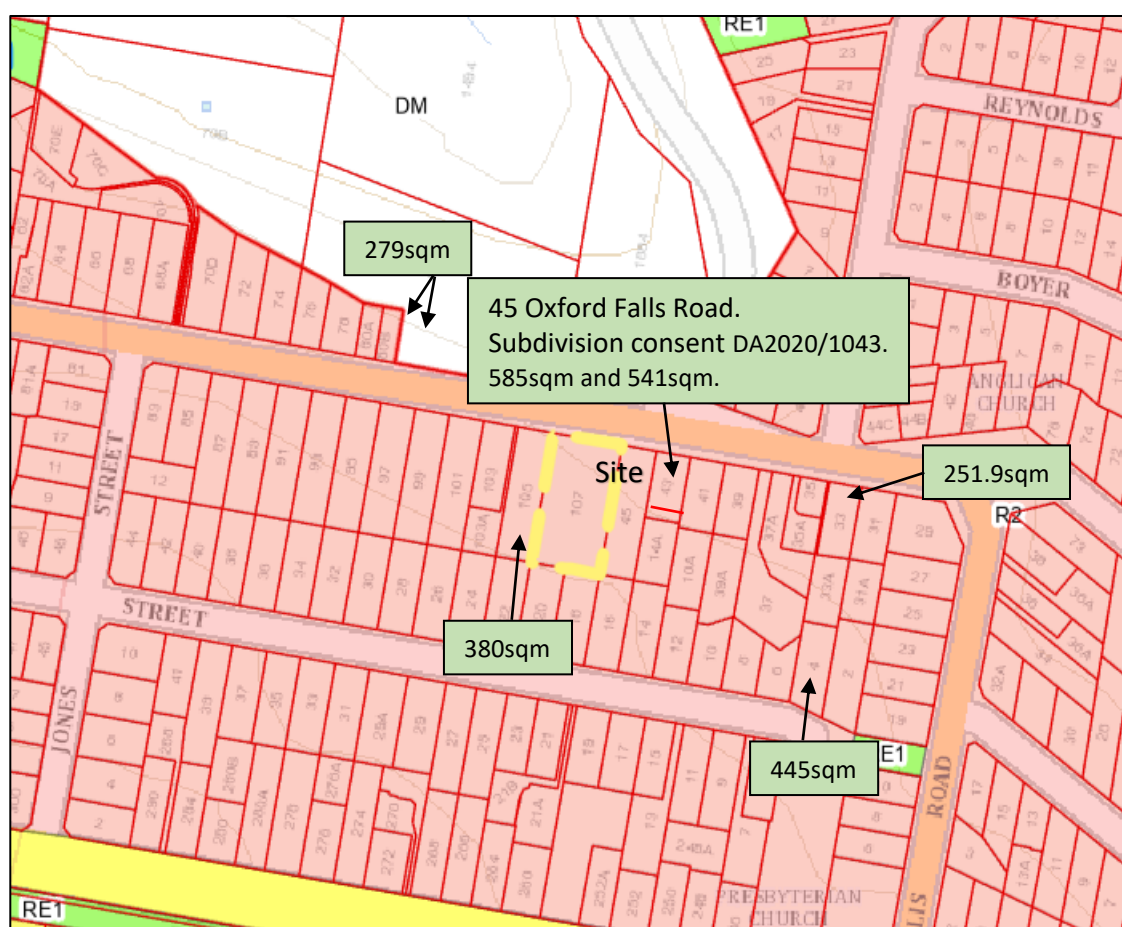


Figure 1: Subject site (shaded in red) in its surrounding context, noting the range of lot shapes and sizes.



Figure 2: Streetscape view of 107 Iris Street Beacon Hill.

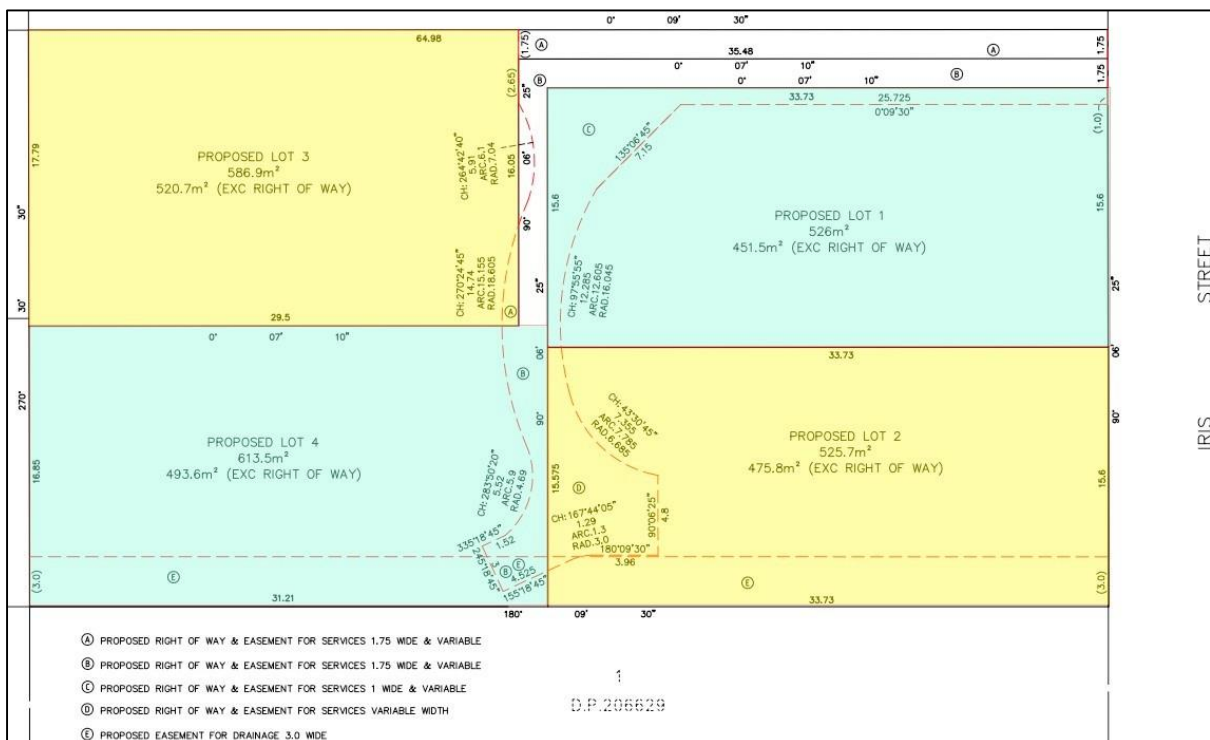


Figure 3: Extract from the submitted plan of subdivision prepared by Michael K Joyce, Surveyor.

3 Background to application

On 20 November 2022, the owner and her project team attended a Pre-DA meeting with relevant Council staff. The proposal was for a 6-lot subdivision that included 45 Oxford Falls Road. Council staff did not support incorporating 45 Oxford Falls Road into the subdivision because access arrangements would adversely impact on landscape area and lot size compliance. A 4 lot subdivision of 107 Iris Street was instead a preferred planning outcome.

The minutes of the meeting stated in part:-

“... A four (4) lot subdivision of 107 Iris Street is considered to provide a favourable planning outcome for the site and would be consistent with the existing subdivision pattern along Oxford Falls Road and Iris Street. It is noted that a four (4) lot subdivision will result in four (4) undersized lots. Given this option will result 10% variation to the development standard Clause 4.1 Minimum subdivision lot size, any development application will be referred to the Northern Beaches Planning Panel (NBLPP) for determination.”

The concluding comments show Council’s preferential support for a 4 lot subdivision of 107 Iris Street as a desirable planning outcome.

“... As discussed throughout these Notes, Council could support a four (4) lot subdivision of 107 Iris Street. The driveway crossover off Iris Street proposed to access Lot C is not supported by Council’s Development Engineer given the close proximity to the existing roundabout located to the east on Oxford Falls Road. ...

Council recommends that a four (4) lot subdivision of 107 Iris Street would result in the most desirable planning outcome for the future of the site and would be in keeping with the surrounding character and subdivision pattern of Iris Street and Oxford Falls Road.

It is recommended that the any future works to both 45 Oxford Falls Road and 107 Iris Street are carried out independently.”

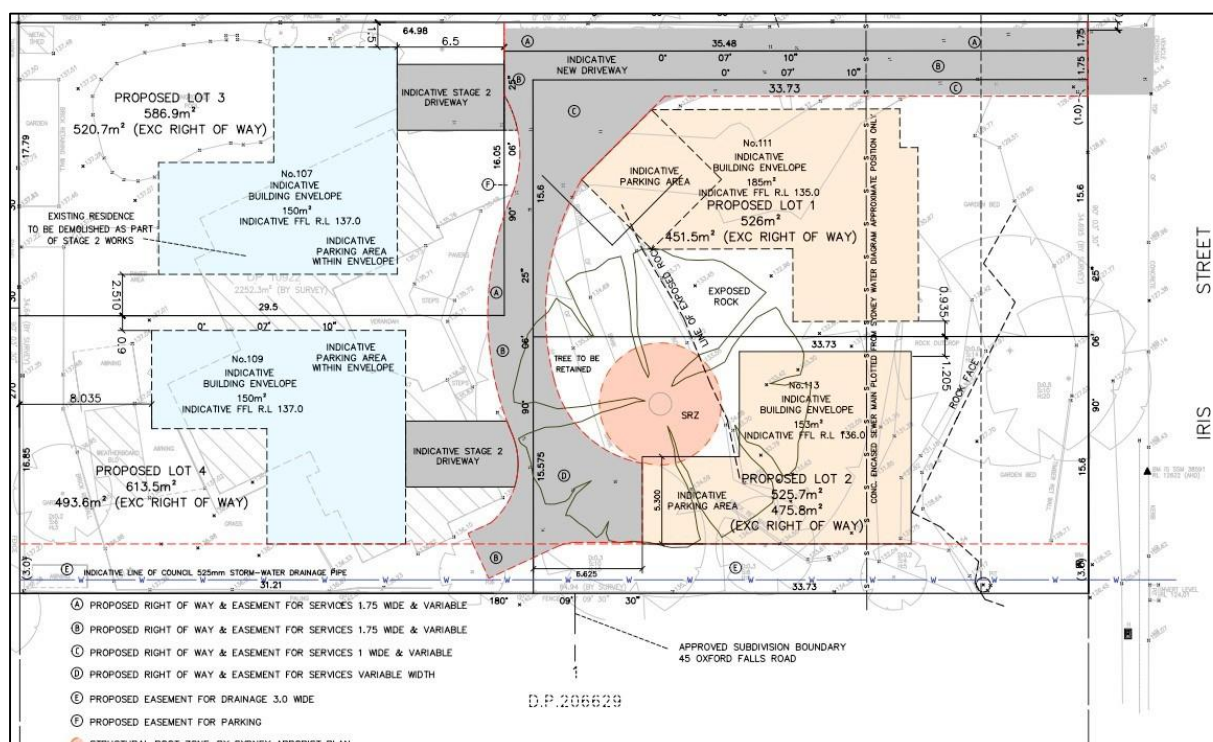


Figure 4: Proposed building footprints and indicative driveway layout.

4 Is the standard a development standard?

Clauses 4.1(3) of the *Warringah Local Environmental Plan 2011* (the LEP) provides minimum lot sizes for subdivision of land by reference to the minimum lot size maps. In this case the lot size map prescribes a lot size of 600m² for the site.

A development standard is defined in S1.4 of the *Environmental Planning and Assessment Act 1979* ("EPA Act") to mean:

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point, ..."

Clause 4.1 (3) is captured under subsection (a) of the EPA Act. Therefore, the control is a development standard and Clause 4.6 of the LEP applies.

5 Clause 4.6 - Warringah Local Environmental Plan 2011

The objectives and provisions of Clause 4.6 'Exceptions to development standards' of the LEP are relevantly as follows:-

- (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 to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
 - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) there are sufficient environmental planning grounds to justify the contravention of 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 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.

The minimum lot size development standard in Clause 4.1(3) of the LEP is not excluded from the operation of Clause 4.6 for this Site by subclause 4.6(8).

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191;
4. *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130;
5. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (**Initial Action**);
6. *Baron Corporation Pty Ltd v The Council of the City of Sydney* [2018] NSWLEC 1552 (**Baron Corporation**);
7. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (**Al Maha**);
8. *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
9. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386;
10. *Moskovich v Waverley Council* [2016] NSWLEC 1015; and
11. *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112

In *Initial Action* Chief Justice Preston considered the proper interpretation of Clause 4.6 and found that:-

- **Clause 4.6 does not require a proponent to show that the non-compliant development would have a neutral or beneficial test relative to a compliant development (at [87]);**
- **There is no requirement for a Clause 4.6 request to show that the proposed development would have a ‘better environmental planning outcome for the site’ relative to a development that complies with the standard (at [88]); and**
- **One way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts (at [95(c)]).** That is, the absence of environmental harm is sufficient to show that compliance with the development standard is unreasonable or unnecessary.

More recently, the Land and Environment Court emphasized that **Clause 4.6 is not subordinate to development standards such as height or FSR, and that the ability to vary a development standard is equally as valid as the development standards themselves.** In that regard, Acting Commissioner Clay held in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 (later upheld on appeal by Chief Justice Preston) in upholding two Clause 4.6 variation requests allowing in excess of 40% over both the height and FSR controls applying to a site in the Double Bay town centre, that:

“It should be noted cl 4.6 of WLEP is as much a part of WLEP as the Clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome”

In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited (*GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at [85]), in contrast with the development standards referred to in, subclause 4.6(6).

6 That Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case (Clause 4.6(3)(a))

Of relevance to Clause 4.6(3)(a), in *Wehbe v Pittwater Council* (2007) NSW LEC 827 ('Wehbe'), Preston CJ sets out 'ways' of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:-

"An objection under SEPP 1 may be well founded and be consistent with the aims set out in Clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

The judgment goes on to state that:-

"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

In *Wehbe*, Preston CJ expressed 5 different 'ways' in which it can be established that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. Those 'ways' are stated as follows:-

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *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;*
5. *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 that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:-

"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Whilst the Court has held that there are at least five different 'ways', and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary (*Wehbe*), it is important to note that:-

- The requirement is to demonstrate that compliance is unreasonable **or** unnecessary. It does not need to be shown that compliance is both unreasonable and unnecessary;
- Wehbe identifies five ways of demonstrating that compliance is unreasonable or unnecessary, but the Courts have held that this list is not exhaustive (*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [22]); and
- Equally, it is not necessary to identify more than one of the five Wehbe tests. “An applicant does not need to establish all of the ways. It may be sufficient to establish only one way” (Initial Action at [22]).

Clause 4.6(3)(a) requires that the written request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case.

In summary, requiring strict compliance with the standard in this case is unreasonable or unnecessary because:-

- the development is consistent with the standard and zone objectives, even with the proposed variation (discussed further below);
- there are no additional significant adverse impacts arising from the proposed non-compliance;
- important planning goals are achieved by the approval of the variation in respect of housing supply.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

Wehbe Way 1 – The objectives of the minimum lot size standard are achieved notwithstanding the non-compliance with the standard

Objectives of the Standard

The objectives of the minimum lot size standard are articulated at Clauses 4.1(1) of the LEP and are set out below:-

1) *The objectives of this Clause are as follows—*

- a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,*
- b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,*
- c) to protect the integrity of land holding patterns in rural localities against fragmentation,*
- d) to achieve low intensity of land use in localities of environmental significance,*
- e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,*
- f) to protect and enhance existing remnant bushland,*
- g) to retain and protect existing significant natural landscape features,*
- h) to manage biodiversity,*
- i) to provide for appropriate stormwater management and sewer infrastructure.*

Compliance with the relevant objectives are addressed in turn below:-

- a) The resulting lot sizes are consistent with the pattern, size and configuration of existing lots in the locality. Given that there is little consistency in the locality regarding the pattern, size and configuration of existing lots, it can be better expressed that the resultant subdivision will not be inconsistent with the subdivision pattern, size and configuration of lots in the locality. Refer to Figure 1 above and Table 2 below. As shown in Table 2, there are a considerable number of allotments in the direct locality well below the minimum lot size of 600m². The proposed subdivision provides for lot sizes (excluding the accessway) which are generally consistent with the minimum lot size standard. Additionally, it is noted that the proposed variation does not reduce the ability of the resulting allotments to support development otherwise than in accordance with the requirements of Council. The proposed lots are capable of supporting future residential development which is compatible with the existing character of the surrounding residential area.
- b) This objective is not relevant. The Site is not within a commercial or industrial area.
- c) This objective is not relevant. The Site is not within a rural locality. The surrounding area is characterized by residential allotments ranging in size and shape.
- d) This objective is not relevant. The Site is not located an area identified as being of environmental significance.
- e) This objective is not relevant. The Site is not identified as bushfire prone land.
- f) The proposal retains remnant bushland features such as two rocky outcrops. The reduced size of the allotments does not inhibit the ability to provide compliant landscaping. The proposal is capable of supporting future development which is sympathetic to the natural environment of Warringah and which protects natural landscape features.
- g) As above. The proposal retains two rock faces identified in the application documentation as well as the retention of the significant oak tree.
- h) This objective is not relevant as the land is not identified as having biodiversity significance. The land has been used as a suburban single dwelling and lacks biodiversity significance. Any concerns in respect of impact on biodiversity can be addressed when the allotments are developed.
- i) The proposal provides for new stormwater and sewer infrastructure to the satisfaction of Council and Sydney Water respectively.

Having regard to the above, the relevant objectives of the development standard are considered to be achieved despite the requested variance to the lot minimum size.

Clause 4.6 Request – Minimum Lot Size

ADDRESS	LOT	DP	SITE AREA m ²
Between 250-300m²			
80A Iris Street Beacon Hill	32	1067494	279.30
80B Iris Street Beacon Hill	32	1067494	279.30
35 Oxford Falls Road Beacon Hill	1	850352	251.90
Between 300-400m²			
35A Oxford Falls Road Beacon Hill	2	850352	382.60
44A Oxford Falls Road Beacon Hill	3	862488	317.20
44B Oxford Falls Road Beacon Hill	2	862488	298.20
44C Oxford Falls Road Beacon Hill	1	862488	339.80
49 Iris Street Frenchs Forest	1	862415	380.60
27 Iris Street Frenchs Forest	1	848217	383.00
27A Iris Street Frenchs Forest	2	848217	434.00
Between 400+ lots			
25 Iris Street Frenchs Forest	1	836660	433.00
51 Iris Street Frenchs Forest	1	1018589	670.90
51A Iris Street Frenchs Forest	2	1018589	422.50
31 Iris Street Frenchs Forest	100	857954	488.40

Table 2: An example list of some lots and lot groups under 600m² within in a 500m radius of the site.

Objectives of the Zone

As noted above, the Site is located in the R2 – Low Density Residential zone. The objectives of the R2 zone are as follows:-

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day-to-day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The zone objectives are broad in nature but nonetheless, the development will be consistent with the zone objectives for the following reasons:

- *The proposed subdivision will increase the housing supply in the Northern Beaches Local Government Area by providing for 3 additional lots for low density housing, being single family dwellings.*
- *The second objective is not applicable.*
- *Future dwellings cannot be approved unless provided with appropriate landscaping consistent with Council's controls or the controls under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. The reduced size of the allotments does not inhibit the ability to provide compliant landscaping. The proposal is capable of supporting future development which is sympathetic to the natural environment of Warringah.*

Clause 4.6 Request – Minimum Lot Size

Having regard to the above, the relevant objectives of the R2 Low Density zone are considered to be achieved despite the requested variance to the minimum lot size. Consistent with the decision in the *Initial Action* judgement and that of *Micaul v Randwick*, the satisfaction of the LEP objectives alone are deemed sufficient environmental grounds to justify the non-compliance with the lot size development standard.

On this basis, the written Clause 4.6 Variation is considered to be well founded as per the first Wehbe Way.

The requirements of Clause 4.6(3)(a) are satisfied.

7 Sufficient Environmental Planning Grounds (Clause 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24), Preston CJ states:

*“The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].”*

Preston CJ clarified what items a Clause 4.6 request does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome (paragraph 86-87):

“Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.”

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site, and whether they are ‘sufficient’.

On the above basis, the following environmental planning grounds are submitted to justify contravening the minimum lot size:-

1. The development achieves the objectives of the zone.
2. The development achieves the objectives of the standard.
3. The lots exceed the minimum lot dimensions under Part C1 of the Warringah Development Control Plan (‘DCP’), being:-
 - a. Minimum width: 13 metres
 - b. Minimum depth: 27 metres; and
 - c. Minimum building area: 150m²

4. The resulting subdivision will support compliant building envelopes despite the variation in lot sizes, which will positively contribute to the locality as shown in Figure 4 above.
5. The subdivision and non-compliance of the lot sizes would not be discernible to a resident of the development, a neighbour or from the public domain. Additionally, noting the topography of the Site, the non-compliance is not perceptible from the street frontage.
6. The subdivision is compatible with the existing pattern of subdivision despite the variation in lot sizes. The proposal is not dissimilar in terms of lot sizes, orientation, or shape, nor is it inconsistent with the pattern of subdivision or dwelling forms in the surrounding streets. Therefore, it provides a compatible streetscape outcome that is compatible with the character of the street. The variation will not have any discernible impact on the streetscape or character of the locality.
7. The variation of the lot size control would be reduced if the access corridor was included in the calculation as set out in Figure 4 above.
8. Council previously agreed that a four-lot subdivision of the Site was considered to provide a favourable planning outcome for the site and would be consistent with the existing subdivision pattern along Oxford Falls Road and Iris Street.
9. There are no adverse amenity impacts as a result of the proposed variation. Any such matters can be addressed when the resulting lots are developed. The difference between a compliant subdivision and the proposed subdivision will have no discernible impact on density.
10. The development achieves the objectives of the Act, particularly as it relates to Objective 1.3(c), *“to promote the orderly and economic use and development of land”*. (Refer Council’s Pre-DA advice for its preference for a 4 lot subdivision in lieu of a 3 lot subdivision). A 4 lot subdivision is compatible with the surrounding pattern of subdivision whereas a 3 lot subdivision is not despite the variation in lot sizes as it would create an irregular pattern with a rear battle axe lot.
11. Strict compliance with the development standard would deny the opportunity of increased land and housing supply in the Northern Beaches LGA and broader region which is experiencing a significant housing supply shortage.

Having regard to the relevant environmental planning grounds and circumstances, strict compliance with the development standard is unreasonable and unnecessary, and the requirements of Clause 4.6(3)(b) are satisfied.

8 Clause 4.6(4)(a)

Preston CJ in Initial Action details how Clause 4.6(4)(a) needs to be addressed.

The first opinion of satisfaction, in Clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). These matters are twofold:-

1. first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a)) and,
2. secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b)).

This written request has addressed Clause 4.6(3)(a) and Clause 4.6(3)(b) above.

The second opinion of satisfaction, in Clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. In circumstances where the proposed subdivision achieves the objectives of the development standard and the zone, there are no adverse amenity impacts as a result and that additional housing is provided, it is clear that the proposal is in the public interest.

The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under Clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in Clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in Clause 4.6(4)(a)(ii).

9 Concurrence - Clause 4.6(4)(b)

The second precondition in Clause 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)).

Under Clause 55 of the Environmental Planning and Assessment Regulation 2021, the Secretary has given written notice, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

10 Clause 4.6(5)

With respect to Clause 4.6(5)(a), the contravention of the minimum lot size standard proposed by this application does not raise any matter of significance for State or regional environmental planning. The proposal responds to the call of strategic plans, which are seeking housing to meet the growing population of the State. Therefore, it is considered that the proposed development responds to the call of the regional strategic aims and objectives by providing additional housing and housing diversity in NSW.

With respect to Clause 4.6(5)(b), as detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the minimum lot size. As such there is no public benefit in maintaining strict compliance with the development standard.

Whilst the proposed subdivision exceeds the minimum lot size, the proposal is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

11 Conclusion

The purpose of the development is to allow for a 4-lot subdivision, which is consistent with the pattern, and size of lots in the locality despite the variation.

Development standards are typically numerical in nature and fail to take into consideration the nature of the development, the design, any site constraints or qualitative aspects of the development or of the particular circumstances of the site which may give rise for justification for a variation. Clause 4.6 of the LEP allows such an analysis to be carried out.

In summary, compliance with the development standard is unreasonable or unnecessary in the circumstances where:-

- The applicant has complied with Council's advice in proposing a 4 lot subdivision in lieu of a 3 lot subdivision because a 4 lot subdivision is logical and is consistent with the subdivision pattern despite the shortfall in the lot areas. A 3 lot subdivision does not conform to the subdivision pattern.
- The development achieves the objectives of the zone.
- The development achieves the objectives of the standard and the lots exceed the minimum lot dimensions under Part C1 of the DCP.
- The subdivision supports compliant building envelopes despite the variation in lot sizes.
- The subdivision addresses the land and housing supply shortage across Sydney in general, and in the Northern Beaches LGA in particular. Strict compliance with the development standard would deny the opportunity of increased housing supply.

This written request has therefore demonstrated that compliance with the development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to allow Council to form the opinion of satisfaction that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that council support the variation on the basis that this Clause 4.6 variation demonstrates that compliance with the development standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.



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