

Clause 4.6 Variation Request Report

79 Ashworth Avenue
Belrose NSW 2085

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1 Introduction

1.1 Report purpose

Development consent is being sought for the subdivision of one into two lots at 79 Ashworth Ave, Belrose NSW 2085. The development exceeds the Minimum Subdivision Lot Size under Clause 4.1 and, as such, a variation is sought under Clause 4.6.

This development standard variation request has been prepared under Clause 4.6 of the Warringah Local Environmental Plan 2011 to justify the departure from development standard for Minimum Subdivision Lot Size in Clause 4.1 of the LEP.

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 circumstances of this unique development being on this particular site that adherence to the 600sqm lot requirement is unnecessary in this case due to the achievement of the objectives of the clause and positive environmental planning outcomes achieved by the development, notwithstanding 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:

- 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.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- This written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).
- The proposed development 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 proposed subdivision is consistent with the existing subdivision pattern in the locality, which comprises lots of varying sizes and configurations.
- Despite the non-compliance with the minimum lot size control, the proposed subdivision will provide lots that are capable of accommodating future dwellings that will provide suitable amenity for occupants and neighbours.
- The proposed subdivision includes an Indicative Building Area (DA-004) and Indicative Building Envelope (DA-005). The purpose of these drawings is to provide a three-dimensional building envelope that the future dwellings must adhere to. This can be imposed via a section 88B instrument.
- The proposed building envelopes represent an enhanced environmental outcome, as they will ensure that the landscaped area and setbacks significantly exceed the requirements of the Warringah Development Control Plan 2011 (DCP 2011) or State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP).

- The proposed subdivision provides additional housing diversity and affordability for the community whilst maintaining a low-density environment; and
- 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 Warringah Local Environmental Plan 2011 permits departures from development standards in certain circumstances. 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.*

The aims and objectives of the Warringah Local Environmental Plan 2011 Clause 4.6 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 Warringah Local Environmental Plan 2011, 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,*

It is noted that the Local Environmental Plan and Clause 4.6(8) was formulated to deliberately exclude a number of development standards from the 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 Minimum Subdivision Lot Size under Clause 4.1 and accepted that there could be merit assessment for departure from the minimum standard for lot size.

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 Size in Clause 4.1 of the Warringah Local Environmental Plan 2011 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, notwithstanding the non-compliance of the proposed 476.22sqm and 516.75sqm lot size compared to the Development Standard of 600sqm.

The building envelopes proposed represent a better environmental outcome by ensuring that the future dwellings are significantly setback and provide a generous provision of landscaped area (well in excess of

the DCP or Codes SEPP requirement). The imposition of building envelopes by way of a Section 88B instrument would, in the circumstances of the case, set a desirable planning precedent.

3 Development Overview

3.1 The Subject Site

Details of the site are provided 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 slopes moderately from the street to the rear of the site (refer **Figure 4**). It is improved with a single storey dwelling house built in the 1970s. The property is landscaped and fenced. As shown on the Detailed Survey, there is a retaining wall and fence at the rear of the property.

There is an Easement to drain water 1.22m wide at the rear of the property, as shown in **Figure 5**.

Surrounding land uses primarily consist of low scale residential development with varying lot sizes. The site is within walking distance to Glenrose Village Shopping Centre and Kambora Public School.

Address	Title Details	Site Area	Site Frontage
79 Ashworth Avenue, Belrose 2085	Lot 1, DP232410	1,101.55 sqm (approx.)	17.07 metres (from survey)



Figure 1: Site location (Source: landchecker.com.au)



Figure 2: Site aerial (Source: landchecker.com.au)

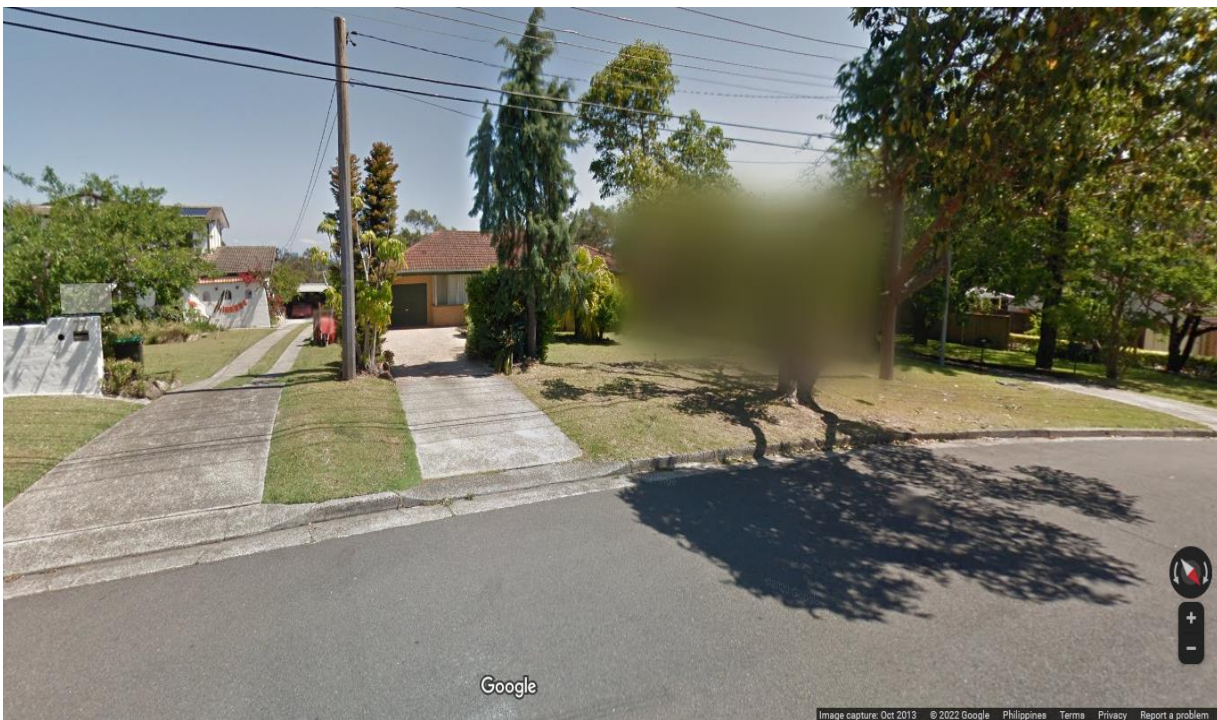


Figure 3: Google Street View



Figure 4: Photo of the rear setback of the property

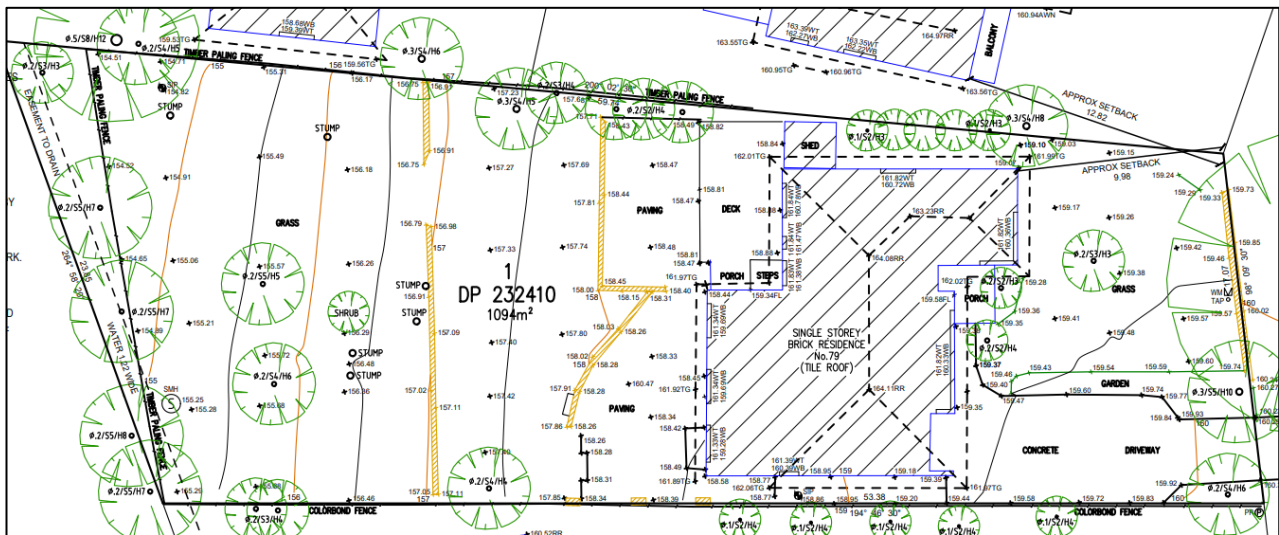


Figure 5: Survey extract showing drainage easement (Source: Nastasi & Associates)

3.2 Proposed Development

The proposed development comprises Torrens title subdivision and demolition of the existing dwelling house.

This will result in two lots, as shown in **Figure 6**. The details of the proposed subdivision can be summarised as follows:

- The front Lot (Lot 1) is proposed to comprise 476.22sqm.
- The rear Lot (Lot 2) is proposed to comprise 621.75sqm (516.75sqm excluding the access handle).
- The access handle (shown as driveway) will comprise a total of 105sqm and form part of Lot 2.

An easement benefitting Lot 1 over the access handle (shown as driveway) is also proposed. This is to ensure that vehicular access to the two lots will be from one consolidated crossover/driveway.

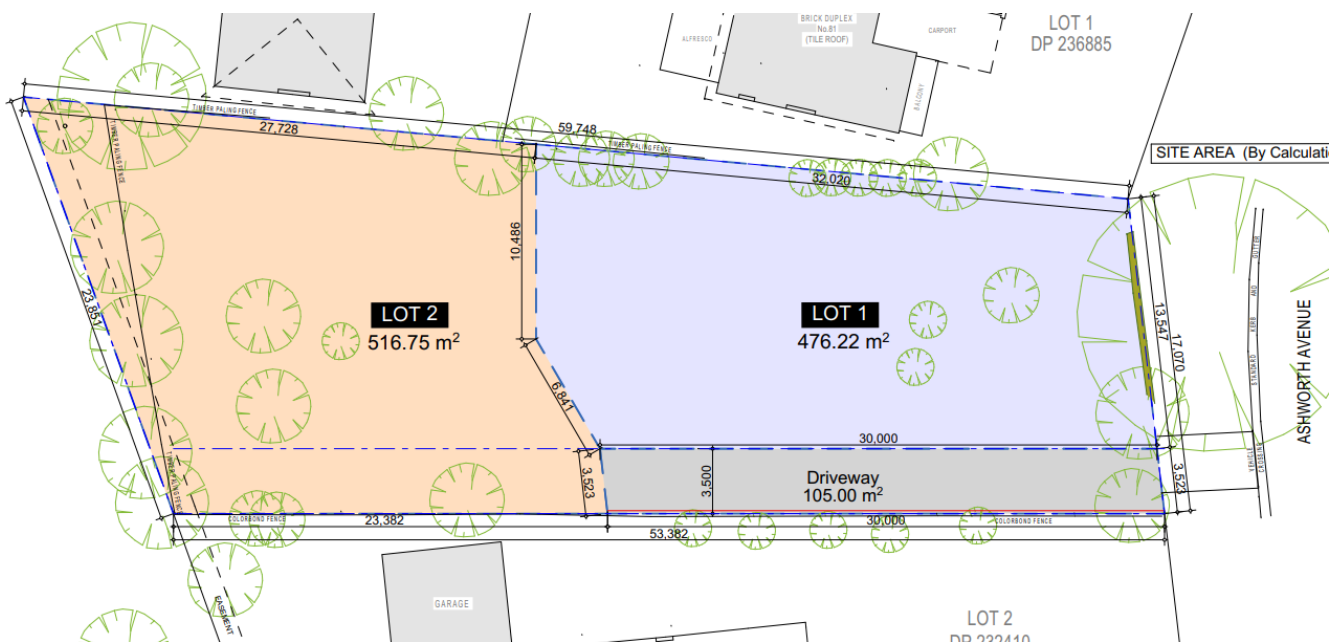


Figure 6: Extract from proposed subdivision plan

3.3 Building Envelopes

The proposed subdivision includes an Indicative Building Area (DA-004) and Indicative Building Envelope (DA-005). The purpose of these drawings is to provide a three-dimensional building envelope that the future dwellings must adhere to. This can be imposed via a section 88B instrument.

As shown in **Figure 7**:

- The future dwelling on Lot 1 is to be contained within a building area that cannot exceed 182.28 sqm (inclusive of garage).
- The future dwelling on Lot 2 is to be contained within a building area that cannot exceed 161.40 sqm (inclusive of garage).

- The future dwelling on Lot 1 must be setback a minimum of 6.5m from Ashworth Avenue. Due to the consolidated vehicle access arrangement, the front setback will not comprise a driveway. This maximises the opportunities for landscaping.
- The future dwellings on Lots 1 and 2 must be setback a minimum of 2m from the side (west) boundary).
- The future dwelling on Lot 2 must be setback a minimum of 6m from the rear (south) boundary.
- One consolidated 3.5m wide driveway is proposed on Lot 2. This will be shared by Lot 1.
- The building envelope proposed allows for a minimum consolidated private open space (POS) area of 60 sqm to be provided. The indicative location of the POS is relatively flat.

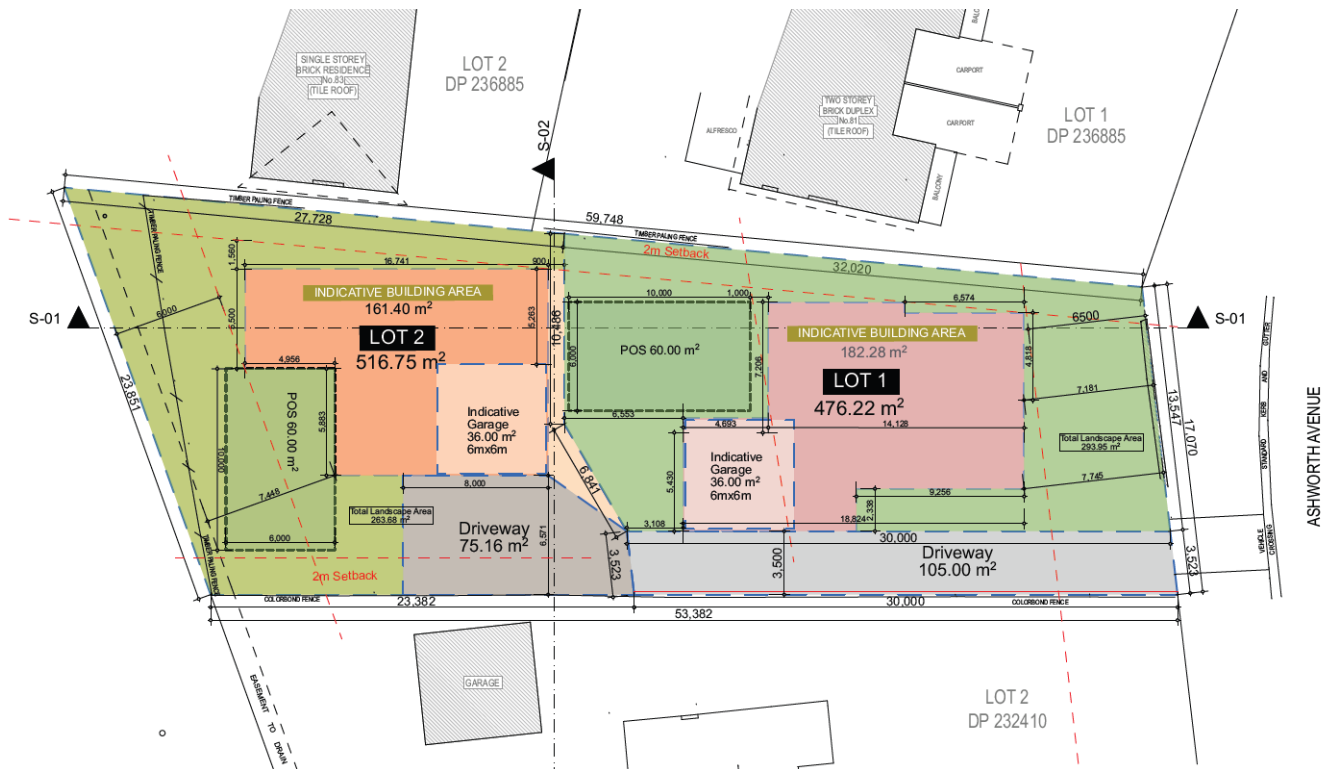


Figure 7: Extract from proposed Indicative Building Area (DA-004) plan

As shown in **Figure 8** and **Figure 9**, a three-dimensional building envelope is also proposed. This provides for:

- A maximum wall height of approximately 7.1m, as measured from ground level (existing) to underside of the ceiling.
- A maximum height to the roof ridgeline of 8.5m, as measured from ground level (existing).
- The progressive stepping of the side setbacks as wall height increases. This is achieved through a 45-degree angled building plane, measured approximately one storey or 3.1m above ground level (existing).

The proposed building envelopes provide certainty that the future dwellings on each lot will achieve an enhanced environment outcome, without limiting flexibility for innovative architectural outcomes.

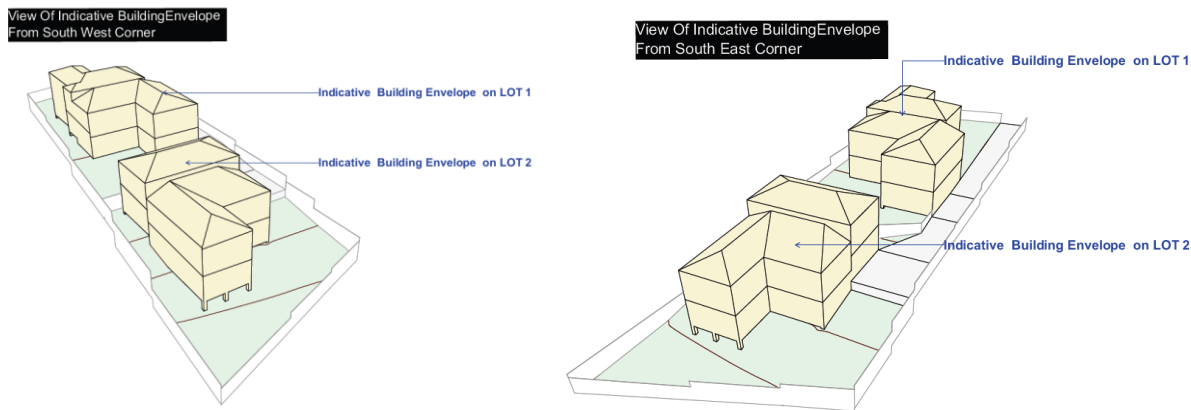


Figure 8: Extract of Indicative Building Envelope (DA-005) plan

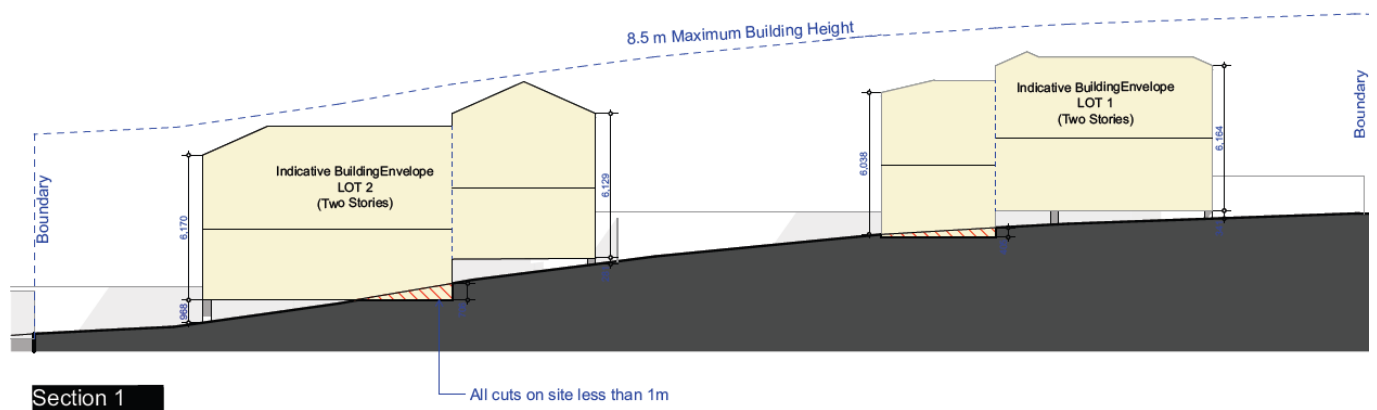


Figure 9: Extract of Indicative Building Envelope (DA-005) plan (2)

3.4 Context and setting

Surrounding land uses primarily consist of low scale residential development with varying lot sizes and configurations. The site is within walking distance of Glenrose Village Shopping Centre and Kambora Public School.

3.5 Supporting Assessment

The site is considered appropriate for subdivision resulting in lots that do not meet the Minimum Subdivision Lot Size for the reasons set out in this assessment.

It is noted that future dwellings will achieve a better environmental outcome through the imposition of strict building envelope requirements and the requirement for one consolidated crossover/driveway that provides shared access. The provision of landscaped area is significantly increased through building envelopes that are smaller than the controls requirement. The requirement to consolidate the driveway allows for a significant provision of landscaping within the front setback and retains a single crossover to Ashworth Avenue.

It is also noted that the resulting lots are compatible with the pattern of development in the immediate locality.

Figure 10 below shows the configuration of allotments to the north-west, including at least five battle-axe lots.



Figure 10: Lot pattern in surrounding area

The subdivision of the subject site into two allotments would be in keeping with the lot pattern in the surrounding area. The configuration of the rear lot, i.e. a battle-axe lot, is not uncommon in this locality.



Figure 11: Pattern of residential development in surrounding area

Figure 11 above shows the pattern of residential development in the immediate area. The building footprints of existing dwellings in the street are shaded yellow (red outline). The proposed future building areas for the subject site are shaded red.

This figure clearly demonstrates that the proposed future development of the property will be in keeping with the pattern of existing residential development, creating building footprints that are not incongruous with the footprints of neighbouring development.

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?

Warringah Local Environmental Plan 2011 (Warringah LEP 2011).

4.1.2 What is the zoning of the land?

The land is zoned R2 – Low Density Residential.

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 ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

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 4.1 – Minimum Subdivision Lot Size. The Clause states as follows:

(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.*
- (2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*
- (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) For the purposes of subclause (3), in calculating the size of a lot the area of any access corridor (including any right of carriageway, access way or other area that provides for vehicle access) is to be excluded, whether the access corridor is to be created or is in existence at the time of the application for development consent for the subdivision.*
- (4) This clause does not apply in relation to the subdivision of any land—*
 - (a) by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or*
 - (b) by any kind of subdivision under the Community Land Development Act 2021.*

4.1.6 What are the objectives of the development standard?

- (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.*

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

600sqm.

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

Proposed Lot 1 measures 476.22sqm and proposed Lot 2 measures 621.75sqm (516.75sqm excluding the access handle). The proposed Lot 2 complies with the standard inclusive of the access handle, however both Lot 1 and Lot 2 (exclusive of the access corridor) present a variation to the standard.

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

For Lot 1 the variation is 20.63% and for Lot 2 the variation is 13.88%. The overall variation across both lots is 17.25%.

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

No.

4.2 Clause 4.6 Assessment – Minimum Subdivision Lot Size

The following section addresses the provisions of Clause 4.6 of the Warringah Local Environmental Plan 2011 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:

(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.*

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

- The proposal protects the residential character:
 - By requiring that the future dwellings are strictly contained within a designated building envelope and that one crossover/driveway is provided;

- The position of the building envelopes significantly limits the visibility of the dwelling on Lot 2 as it is located behind the dwelling on Lot 1. This assists in maintaining a consistent streetscape character;
- The street setback to Lot 1 provides for significant landscaping opportunities as no driveway or garage/carport can be located in this area;
- The side setbacks will, at a minimum exceed 2m. This affords opportunities for dense landscaping and small/medium sized trees;
- The proposed lots are consistent with the pattern and configuration of existing lots and development in the locality as shown in **Figures 10** and **Figure 11**;
- As shown in **Table 1**, the development of the resultant lots can accommodate a permissible use that complies with relevant planning provisions and controls, thus supporting the objective to protect residential character. The building envelopes provide an enhanced environmental outcome that would otherwise be achieved under the DCP 2011 or the Codes SEPP. It is clear from this assessment that the future dwellings will comply and improve upon the key requirements of the DCP 2011;
- The future development of Lot 2 will not appear dominant in the public domain as the site slopes moderately to the rear. Furthermore, the building envelope is positioned such that it is located behind the dwelling on Lot 1;
- It is not located in an area of environmental significance;
- No bushland or individual trees will be affected by the proposal;
- The natural landscape setting will be maintained through the provision of landscaped area that exceeds the DCP 2011 requirements. As stated above, the side setbacks allow for dense planting and small/medium sized trees. There are opportunities for landscaping and large trees within the street and rear setbacks; and
- An appropriate stormwater arrangement has been designed and submitted with the development application.

Table 1: Comparison of Compliant and Proposed Envelope

DCP 2011 Chapter	Control	Proposed
B1 Wall Heights	Walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space).	The building envelope proposes a maximum wall height of 7.138m.
B2 Number of Storeys	2 storeys	2 storeys
B5 Min Side Boundary Setback	0.9m	2m
B7 Min Front Boundary Setback	6.5m	6.5m – 7.745m
B9 Rear Setback	6m	6m – 7.448m
C1 Subdivision	Minimum building area: 150 sqm	Lot 1: 182.28 sqm Lot 2: 161.40 sqm
Access	3.5m wide	3.5m wide
C3 Parking Facilities	The controls seek to minimise dominance of car parking structures.	The garage for Lot 1 must be located within the building envelope proposed and must be accessed via a shared driveway. This is an enhanced streetscape outcome to a

DCP 2011 Chapter	Control	Proposed
		<p>traditional residential development, where separate vehicular access is provided. This approach minimises the dominance of car parking structures.</p> <p>The garage for Lot 2 must be located within the building envelope proposed. It is therefore unlikely to be visible from the street.</p>
D1 Total Landscaped Area	Minimum 40%	557.63 sqm (51%)
Lot 1 Landscaped Area		293.95 sqm (62%)
Lot 2 Landscaped Area		263.68 sqm (42% inclusive of access handle or 51% exclusive of access handle)
D2 Private Open Space	Minimum area of private open space required is 60sqm with a minimum dimension of 5m	<p>An indicative area is shown on the plans to demonstrate to Council, how a future dwelling could comply with this control. The proposal does not seek to fix the location of the POS as there may be a position/orientation that achieves compliance.</p> <p>The POS areas are relatively flat and do not encroach on existing timber paling fence/retaining wall at the rear of the site.</p>
D9 Building Bulk	<p>Side and rear setbacks are to be progressively increased as wall height increases.</p> <p>Note: There is no numeric requirement</p>	The envelope provides for the progressive stepping of the side setbacks as wall height increases. This is achieved through a 45-degree angled building plane, measured approximately one storey or 3.1m above ground level (existing).

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>	The rear portion of the site would not be used to its full residential potential without the proposed development. 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 ultimately contribute to the housing stock of Belrose whilst maintaining consistency with the density of the locality. The proposal will offer housing diversity to support affordable housing options in the Northern Beaches area.
<i>g) to promote good design and amenity of the built environment</i>	The proposed subdivision includes an Indicative Building Area (DA-004) and Indicative Building Envelope (DA-005). The purpose of these drawings is to provide a three-dimensional building envelope that the future dwellings must adhere to. This can be imposed via a section 88B instrument. Notwithstanding the non-compliance with the 600sqm minimum subdivision lot size, the resulting lots will be able to support future development that complies and improves upon Council's requirements for good design and amenity. This has been demonstrated in Table 1 and discussed in Section 3.5.
<i>h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants</i>	The future dwellings can be designed to a high standard of design and construction protect the health and safety of occupants, while providing a low maintenance site and buildings for ongoing maintenance considerations in the future.

Strict compliance with Clause 4.1, Minimum Subdivision Lot Size, of the Warringah Local Environmental Plan 2011 would hinder the attainment of the objectives of Clause 4.1 on the basis that:

- The proposed allotments are capable of accommodating future development which is compatible with the density of existing and future development within the locality;
- The future development of Lot 2 will not appear dominant in the public domain as the site slopes moderately to the rear and the building envelope is located behind the dwelling on Lot 1;
- The proposed lots are consistent with the pattern and configuration of existing lots and development in the locality;
- The proposal maximises the landscaped area outside of the building envelopes to protect the landscaped setting;
- The resulting allotments will provide appropriate access and services on the site, notably by a consolidated access arrangement;
- It would provide for additional housing availability and support complimentary uses in the local area;

- The proposal does not constitute overdevelopment, noting that the building envelopes exceed the setback and landscaped area requirements;
- The discrepancy between the minimum subdivision lot size and the actual lot size does not hinder the logical redevelopment of the site for a planned low density residential development;
- It is not located in an area of environmental significance;
- No bushland or individual trees will be affected by the proposal;
- The natural landscape setting will be maintained through the provision of landscaped area that exceeds the DCP 2011 requirements. As stated above, the side setbacks allow for dense planting and small/medium sized trees. There are opportunities for landscaping and large trees within the front and rear setbacks; and
- An appropriate stormwater arrangement has been designed and submitted with the development application.

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>	The proposal provides an opportunity for additional housing in a suitable location that respects the low-density residential nature of the area.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	It does not impact on other land uses that provide facilities or services to meet the needs of residents.
<i>To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.</i>	Each lot provides a landscaped setting that exceeds the requirements of relevant local provisions and controls.

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 Warringah Local Environmental Plan 2011 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; and
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.

The Minimum Subdivision Lot Size standard is 600sqm. Proposed Lot 1 measures 476.22sqm and proposed Lot 2 measures 621.75sqm (516.75sqm excluding the access handle). The proposed Lot 2 complies with the standard inclusive of the access handle, however both Lot 1 and Lot 2 (exclusive of the access corridor) present a variation to the standard. For Lot 1 the variation is 20.63% and for Lot 2 the variation is 13.88%. The overall variation is 17.25%.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, as the proposal complies with the *No. 1 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:

- The proposed development 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;
- Despite the non-compliance with the minimum lot size control, the proposed subdivision will provide lots that are capable of accommodating future dwellings that will provide suitable amenity for occupants and neighbours;

- The proposed subdivision includes an Indicative Building Area (DA-004) and Indicative Building Envelope (DA-005). The purpose of these drawings is to provide a three-dimensional building envelope that the future dwellings must adhere to. This can be imposed via a section 88B instrument;
- The proposed building envelopes represent an enhanced environmental outcome, as they will ensure that the landscaped area and setbacks significantly exceed the requirements of the Warringah Development Control Plan 2011 (DCP 2011) or State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP);
- The proposed subdivision is consistent with the existing subdivision pattern in the locality, which comprises lots of varying sizes and configurations;
- The proposed subdivision provides additional housing diversity and affordability for the community whilst maintaining a low-density environment; and
- 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 Minimum Subdivision Lot Size. Importantly, it is considered that a precedent will not be set by supporting the proposed departure as this proposal provides a unique approach to managing future development on the site, being the imposition of a Section 88B Instrument.

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 Warringah Local Environmental Plan 2011, 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 application.