

Proposed Residential Development

22 Stuart Street, Manly

Clause 4.6 – Exceptions to development Standards Variation to Clause 4.1 – Minimum Subdivision Lot Size

This Clause 4.6 Variation relates to an exceedance of Clause 4.1 – Minimum Subdivision Lot Size of the Manly Local Environmental Plan 2013 and which prescribes a minimum allotment size of 250m².

This Clause 4.6 Variation is to be read in conjunction with the following accompanying documentation:

- Plan of Proposed Subdivision prepared by Copland C. Lethbridge, Ref No. 17212 DP and dated 12/03/25.

The proposal seeks approval for the Torrens title subdivision of one allotment into two lots.

The proposal provides for the following allotment sizes:

Proposed Lot 1: 247.3m²

Proposed Lot 2: 247.3m²

The proposal results in a non-compliance of 2.7m² for each allotment, which represents a 1.08% variation.

Given that the proposal does not strictly comply with the minimum allotment required by Clause 4.1 of the Manly LEP 2013 and in order for consent to be granted to the proposal a variation pursuant to Clause 4.6 of the LEP is required.

This Clause 4.6 variation has been prepared having regard to the recent decisions of the Land & Environment Court.

It is submitted that the variation is well founded and is worthy of the support of the Council.

The following is an assessment of the proposed variation against the requirements of Clause 4.6.

1. What are the objectives of Clause 4.6 and is the proposal consistent with them.

The objectives of Clause 4.6 of the LEP are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

It is my opinion, as is demonstrated by the responses to the questions below, that the proposed variation is consistent with the objectives of this clause.

2. Is the standard to be varied a Development Standard to which Clause 4.6 applies

A “development standard” is defined in Section 4 of the Environmental Planning & Assessment Act as:

development standards means 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,*
- (b) *the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) *the cubic content or floor space of a building,*
- (e) *the intensity or density of the use of any land, building or work,*
- (f) *the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) *the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) *the volume, nature and type of traffic generated by the development,*
- (i) *road patterns,*
- (j) *drainage,*
- (k) *the carrying out of earthworks,*
- (l) *the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) *the provision of services, facilities and amenities demanded by development,*
- (n) *the emission of pollution and means for its prevention or control or mitigation, and*

(o) such other matters as may be prescribed.

Clause 4.1 is contained within Part 4 of the LEP and which is titled Principal Development Standards. It is also considered that the wording of the Clause is consistent with previous decisions of the Land & Environment Court of NSW in relation to matters which constitute development standards.

It is also noted that Clause 4.1 does not contain a provision which specifically excludes the application of Clause 4.6.

On this basis it is considered that Clause 4.1 is a development standard for which Clause 4.6 applies.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case.

Sub-clause 4.6(3) sets out the matters that must be demonstrated by a written request seeking to justify a contravention of the relevant development standard (that is not expressly excluded from the operation of clause 4.6 under the Manly Local Environmental Plan 2013):

- (3) Development consent must not be granted for 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 of the case, and*
 - (b) there are sufficient environmental planning grounds to justify contravention of the development standard.*

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out five justifications to demonstrate that compliance with a development standard is unreasonable or unnecessary. These include:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying objective or purpose would be defeated or thwarted if compliance was required.
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or
- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

The first reason is considered to be applicable in this instance.

The following is an assessment of the proposal against the objectives of Clause 4.1 of the Manly LEP.

- (a) *to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*

The proposal subdivision results in two residential allotments that are compatible with the established subdivision pattern in this locality. The existing surrounding properties provide for a range of allotment shapes and sizes, many of which are smaller than the subject parent allotment. The existing subdivision pattern is depicted in the following map:



Existing Subdivision Pattern

The resultant allotments are each sufficient in size to accommodate a dwelling with landscaping that is compatible in the locality and can comply with Council controls. The subdivision plan provides for indicative building footprint to demonstrate this. In addition a Feasibility Design has been prepared by All Australian Architecture which provides for an indicative building footprint that demonstrates each allotment can support a dwelling house that achieves compliance with the numerical requirements of the LEP and DCP.

There are a number of similar style developments which have been developed with attached dwellings in particular, No. 23, 24, 27 & 29 Stuart Street, Manly.

The proposal achieves this objective.

- (b) *to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*

The existing surrounding development comprises a mixture of residential development including single detached dwellings, attached dwellings and residential flat buildings.

The sites southeast boundary adjoins a two storey attached dual occupancy, with the adjoining northwest property comprising a two and three storey residential flat building.

The proposed subdivision will provide for two allotments that are each capable of supporting a dwelling that is compatible with the existing streetscape. As noted above, a Feasibility Design has been prepared by All Australian Architecture which provides for an indicative building footprint that demonstrates each allotment can support a dwelling house that achieves compliance with the numerical requirements of the LEP and DCP.

The proposal achieves this objective.

- (c) *to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*

There is no constraints to the existing site that would require a larger allotment. There is no significant vegetation or natural features. The site does not have frontage to a waterway. There are potential for views towards the south. Any future development of the sites can comply with the height and floor space controls and a view assessment carried out during the assessment.

The proposal achieves this objective.

- (d) *to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

The site is located in close proximity to Manly Town Centre, being less than 800m walk to the centre. The site is well located in terms of public transport, with both bus and ferry services within walking distance. The site is also located within the State Government's Low & Mid Rise Housing area which would permit an attached dual occupancy and Torrens title subdivision with a minimum allotment size of 225m².

The proposal achieves this objective.

On this basis it is my opinion that strict compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

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

Consistent with the findings of the Court in *Initial Action P/L v Woollahra Municipal Council (2018) 236 LGERA 256; [2018] NSWLEC* an applicant is required to demonstrate in writing that there are sufficient environmental planning grounds to justify the variation.

In *Initial Action* at [24], Preston CJ stated, that 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”.

Further he stated,

“... the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl. 4.6(4)(i) that the written request has adequately addressed this matter”.

In order to determine environmental planning grounds relevant to the non-compliance it is often accepted to relate the departure to the objects of the Act as set out at Section 1.3 – Objects of the Act.

The following object of the Act is considered to be relevant to the proposal.

- (c) to promote the orderly and economic use and development of land,*
- (g) to promote good design and amenity of the built environment,*

Relevant to the proposal the following submission is provided in relation to the question as to whether there are sufficient environmental planning grounds to justify the non-compliance.

What is the aspect or element of the development that contravenes the development standard

The proposal provides for the following allotment sizes:

Proposed Lot 1: 247.3m²

Proposed Lot 2: 247.3m²

The proposal results in a non-compliance of 2.7m² for each allotment, which represents a 1.08% variation.

What are the environmental grounds associated with the departure

It is my opinion the environmental planning grounds associated with the proposal are as follows:

1. The non-compliance is very minor, being only 2.7m² per lot or 1.08%.
2. The site is located within a locality with a variety of allotment sizes and shapes along with a range of development including, attached dwellings and residential flat buildings. The proposed subdivision results in an additional parcel of land that can be developed in the future to be compatible with the existing established development pattern.

As noted above a Feasibility Design has been prepared by All Australian Architecture which provides for an indicative building footprint that demonstrates each allotment can support a dwelling house that achieves compliance with the numerical requirements of the LEP and DCP.

3. The proposal will not result in any additional impacts upon the adjoining properties particularly in relation to a loss of view, overlooking or views.

It is my opinion based upon the above that the departure does promote good design and amenity of the built environment consistent with 1.3(g) and promotes the orderly and economic use and development consistent with 1.3(c) the Act.

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

It is considered that a contravention of the development standard is justified on environmental planning grounds on the basis that the non-compliance will not result in any unreasonable impacts upon adjoining properties or the surrounding locality.

It is therefore my opinion based upon the above that this submission has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by Clause 4.6(3)(b) of the LEP.

Conclusion

It is therefore my opinion based upon the content of this submission that a variation of the minimum allotment size requirement of Clause 4.1 of the Manly LEP 2015 is appropriate in this instance.

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