

CLAUSE 4.6 TO CLAUSE 4.1
(MINIMUM SUBDIVISION LOT SIZE)
OF
CANTERBURY-BANKSTOWN LOCAL ENVIRONMENTAL PLAN 2023

257 WANGEE ROAD, GREENACRE

August 2024



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1. Introduction

This is a request to vary a development standard pursuant to the provisions of Clause 4.6 of Canterbury-Bankstown local Environmental Plan 2023 the relevant clause being Clause 4.1 Minimum subdivision lot size.

This written variation request has been provided to support the proposed demolition, subdivision and construction of new double storey dwelling houses at 257 Wangee Road, Greenacre (the site).

The relevant minimum subdivision lot size standard under Clause 4.1 and shown on Lot Size Map under CBLEP 2023 is 450m².

The subject site has a total site area of 613.2m². The development proposes two new allotments with Lot 1 having a site area of 306.6 m² and Lot 2 having a site area of 306.6 m². Accordingly, both of the proposed new lots are less than the minimum required 450 m²

The minimum subdivision lot size control is a development standard for the purposes of the EP&A Act 1979

This submission has been prepared having regard to the following guideline judgements:

- I. *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'),
- II. *Wehbe v Pittwater Council [2007] NSWLEC 827*,
- III. *Big Property Pty Ltd v Randwick City Council [2021]*
- IV. *SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC*
- V. *Statewide Planning Pty Ltd v Canterbury-Bankstown Council [2021] NSWLEC 1210* (Statewide)
- VI. *Karavellas v Sutherland Shire Council [2004] NSWLEC 251* ('Karavellas')
- VII. *Melissa Grech v Auburn Council [2004] NSWLEC 40*
- VIII. *Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 18*,

This submission contends that strict compliance with the minimum lot size is unreasonable and/or unnecessary in the circumstances of the case and that the variation sought can be supported and that the Clause 4.6 exception to the development standard should be upheld.

2. Development Standard to be Varied – Minimum Subdivision Lot Size:

The relevant development standard to be varied is the minimum 450 m² subdivision lot size control under Clause 4.1. Clause 4.1 of CBLEP 2023 relevantly provides:

4.1 Minimum subdivision lot size

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

(a) *to ensure lots are large enough to accommodate proposed dwellings, setbacks to adjoining land, private open space and landscaped areas, driveways and vehicle manoeuvring areas,*

(b) *to ensure the subdivision of low density residential zoned land reflects and reinforces the predominant subdivision pattern of the area,*

(c) *to ensure lots can be used for buildings that are safe from flooding, bush fire risk and other hazards,*

(d) *to ensure lots are large enough to protect special attributes, including natural or cultural features, heritage items, heritage conservation areas, trees and natural topographical features,*

- (e) to ensure all lots are provided with adequate and safe access,
 - (f) to minimise the likely adverse impact of subdivision and development on the amenity of the area,
 - (g) to prevent fragmentation or isolation of land.
- (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) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size for the purposes of subclause (3).
- (3B) Despite subclause (3), development consent must not be granted to—
- (a) subdivision of land in Zone IN1 unless each resulting lot is at least 24m wide at the front building line, or
 - (b) subdivision of land in Zone IN2 unless each resulting lot is at least 20m wide at the front building line, or
 - (c) subdivision of land identified as “Area 1” on the Lot Size Map unless—
 - (i) the total number of resulting lots does not exceed 181 lots, and
 - (ii) the size of each resulting lot is at least 200m².
- (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.

The relevant Minimum subdivision lot size map is identified below:



Figure 1: Minimum subdivision lot size map (450 m² lot sizes) Source: NSW Planning Portal Digital EPI Viewer

3. Nature of Variation Sought

This Clause 4.6 Request relates to the proposed Torrens Title Subdivision of the existing property (1 lot) into 2 new lots.

Existing total site area: 613. m² (by survey calculation)

Proposed lot size after subdivision:

- Lot 1 will be approximately 306.6 m²
- Lot 1 will be approximately 306.6 m²

The subject site has a minimum subdivision allotment size of 450 m². (CBLEP 2023)

Extent of non-compliance:

- Lot 1 has shortfall of 143.4 m² or 31.8%
- Lot 2 has shortfall of 143.4 m² or 31.8%

Therefore, both lots require merit assessment under Clause 4.6 of CBLEP 2023

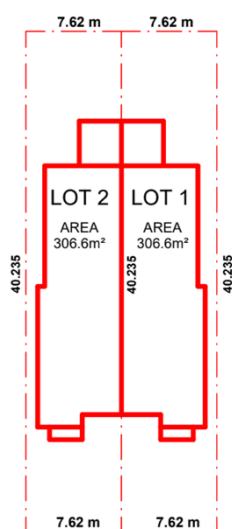


Figure 2: Excerpt of proposed

SUBDIVISION PLAN
1:200 @ A1
1:200 @ A3

3, DP 11603

It is important to highlight that Clause 4.6 functions similarly to State Environmental Planning Policy No 1 – Development Standards (SEPP 1) in that the **magnitude or percentage** of the variation alone is **not considered** a material factor in determining whether the variation should be permitted. In the matter of *Legal and General Life v North Sydney Municipal Council (1990) 69 LGRA 201*, the court upheld the decision of North Sydney Council to allow 329% variation for FSR control and 240% for Height control. Several examples of decisions by the NSW Land and Environment Court (the Court) are provided below:

- In *Baker Kavanagh Architects v Sydney City Council [2014] NSWLEC 1003* the Court granted development consent for a 3-storey shop top housing development in Woolloomooloo, with a FSR variation of 187%.
- In *Abrams v Council of the City of Sydney [2019] NSWLEC 1583* the Court granted development consent for a 4-storey mixed use development, with a FSR variation of 75% (2.63:1 versus LEP maximum of 1.5:1).
- In *Moskovich v Waverley Council [2016] NSWLEC 1015* the Court granted development consent for a residential flat building in Bondi, with a FSR variation of 65% (1.5:1 versus LEP maximum of 0.9:1).
- In *Edmondson Grange Pty Ltd v Liverpool City Council [2020] NSWLEC 1594* the Court granted development consent for 3x residential flat buildings, with a FSR variation of 59% (1.19:1 versus LEP maximum of 0.75:1).
- In *Landco (NSW) Pty Ltd v Camden Council [2018] NSWLEC 1252* the Court granted development consent for a land subdivision, with lot size variations ranging between 47-51% (220-240m² versus LEP minimum 450m²).

To provide a basis for comparison, this particular Development Application (DA) involves a variation of 31% (for each lot).

4. Minimum Subdivision Lot Size – Development Standard

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,*
- (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."*

The 450 m² minimum subdivision lot size standard is a development standard as defined under the EP&A Act 1979.

5. Clause 4.6 Exceptions to development standards

The following provides a response to relevant Clause 4.6 provisions of Canterbury-Bankstown Local Environmental Plan 2023.

Clause 4.6 (2) provides that

(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.

The minimum subdivision lot size development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6 (3) provides that

(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.

(Note—The [Environmental Planning and Assessment Regulation 2021](#) requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b)).

The proposed development does not comply with the minimum subdivision lot size development standard pursuant to cl4.1 of the CBLEP 2023. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed further in this written request.

6. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. [cl. 4.6(3)(a)]

Compliance with the development standard is considered unreasonable and unnecessary in the circumstances of the case. In the decision of *Four2Five*, the Commissioner identified to satisfy Clause 4.6(3)(a) merit considerations were required to be amounted to no more than establishing an absence of environmental harm.

Also, in *Four2Five*, it was considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*). Under *Wehbe*, the most common way of demonstrating that compliance is unreasonable or unnecessary, was whether the objectives of the standard were still met despite the contravention of that standard.

Therefore, to determine “unreasonable and unnecessary” the 5-Part-Test outlined in *Wehbe* is considered to be relevant in demonstrating unreasonable and unnecessary in the circumstances of the

case. Although these tests are primarily relative to the function of SEPP1, the tests are not exhaustive or prescriptive. The tests assist in adequately addressing the non-conformity allowing the consent authority with the ability to grant consent

Test 1: The objectives of the development standard are achieved notwithstanding the non-compliance.

The objectives of the Clause 4.1(1) are as follows:

- (a) to ensure lots are large enough to accommodate proposed dwellings, setbacks to adjoining land, private open space and landscaped areas, driveways and vehicle manoeuvring areas,***

The proposed lot size ensures it accommodates all essential requirements, including the proposed dwellings, setbacks to adjoining land, private open space, landscaped areas, driveways, and vehicle manoeuvring areas. Each aspect has been carefully considered and incorporated into the design of the lots to ensure they meet these criteria effectively.

This objective is satisfied, notwithstanding the minimum lot size not being achieved, as the development achieves compliance with the setback, private open space, landscaping, driveway and vehicular manoeuvrability requirements under the Canterbury-Bankstown Development Control Plan 2023.

- (b) to ensure the subdivision of low density residential zoned land reflects and reinforces the predominant subdivision pattern of the area,***

The proposed subdivision is not within a low-density residential zone, as the site is zoned R4: High Density Residential. The proposed subdivision will reinforce the predominant subdivision pattern of the area, and specifically the immediate surrounding environment. Figure 3 below and the sites on the ensuing page have identified properties where Torrens Title Subdivision have been previously approved in the locality by Council.



Figure 3: Some examples subdivided properties along Wangee Street where Torrens Title Subdivision has already occurred

The proposed new allotments are compatible with the existing development and subdivision pattern in the immediate context of the environment and with the emerging pattern of development in the locality. The proposed lot sizes are consistent with several existing lots within 100m walking distance of the site in the surrounding area and the resultant dwellings are also comparable where numerous allotments are less than the 450 m² requirement by Clause 4.1 of the CBLEP 2023 including:

- 259 Wangee Road (306 m²)
- 259A Wangee Road (305 m²)
- 229 Wangee Road (300 m²)
- 229A Wangee Road (299 m²)
- 223 Wangee Road (299 m²)
- 223A Wangee Road (300 m²)
- 274 Wangee Road (306 m²)
- 274A Wangee Road (306 m²)
- 264 Wangee Road (305 m²)
- 264A Wangee Road (306 m²)
- 121 Macquarie Street (305 m²)
- 121A Macquarie Street (305 m²)
- 117 Macquarie Street (306 m²)
- 117A Macquarie Street (305 m²)

(c) to ensure lots can be used for buildings that are safe from flooding, bush fire risk and other hazards,

Objective not relevant in this instance.

(d) to ensure lots are large enough to protect special attributes, including natural or cultural features, heritage items, heritage conservation areas, trees and natural topographical features,

Objective not relevant in this instance.

(e) to ensure all lots are provided with adequate and safe access,

The proposed lots are designed to ensure each one is provided with adequate and safe access.

(f) to minimise the likely adverse impact of subdivision and development on the amenity of the area,

The proposed subdivision will not compromise the amenity of the existing development or result in unreasonable amenity impacts upon adjoining properties including bulk and scale, overshadowing and visual/acoustic privacy.

This objective is satisfied, notwithstanding the minimum lot size not being achieved, as the key amenity tests prescribed under the Canterbury-Bankstown Development Control Plan 2023 have been achieved.

(g) to prevent fragmentation or isolation of land.

The proposed subdivision will prevent the fragmentation or isolation of land.

On 23 June 2023, the subject site was rezoned from R2 Low Density Residential to R4 High Density Residential. Prior to this rezoning, the subject site being area of 613 m² would have qualified for subdivision to accommodate a dual occupancy development, or a semi-detached dwelling development with Torrens Title Subdivision under CBLEP 2023. This zoning change resulted in the inefficient and uncoordinated development of the area, as site isolation occurred to 257 Wangee Road as a result.

The crucial point here is to first consider "what exactly do the planning controls require for a specific site like the subject site?"

The Senior Commissioner of the Land and Environment Court recently highlighted this in a significant decision, as seen in *Statewide Planning Pty Ltd v Canterbury-Bankstown Council [2021] NSWLEC 1210* (Statewide). In this case, the Court ruled that:

1. if there are specific provisions within a LEP or DCP that apply to a site and regulate ‘**Site Isolation**’, it is those provisions which must be considered (and not ignored) as part of any DA, including whether those provisions may be applied **flexibly** as permitted by s.4.15(3A)(b) of the Act;
2. if the applicable LEP or DCP is silent on the regulation of ‘Site Isolation’, or if there are gaps in such provisions, it is necessary only then to consider the Court’s ‘Site Isolation’ planning principle, which is set out in *Karavellas*.

In the matter of *Karavellas v Sutherland Shire Council [2004] NSWLEC 251* ('*Karavellas*'), Commissioner Tuor of the Land and Environment Court synthesized principles derived from earlier decisions, including those of Commissioner Brown in *Melissa Grech v Auburn Council [2004] NSWLEC 40*, and her own decision in *Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 18*, focusing on the following considerations:

1. Firstly, is amalgamation of the sites feasible? (*the First Limb*); and
2. Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible? (*the Second Limb*).

The First Limb of *Karavellas* (dealing with the process of negotiating a purchase) in fact expressly only applies “where a property will be isolated by a proposed development” (see *Karavellas* at para [18]). But for the subject site 257 Wangee Road has been isolated due to **rezoning** of the site. Even if the First Limb is considered, there are no longer any remaining adjacent / contiguous sites that it will be able to amalgamate with in the future as shown in Figure 4 and Figure 5.



Figure 4: Adjacent dwellings to the east (255 Wangee Road & 253 Wangee Road)



Figure 5: Adjacent dwelling to the West (259 Wangee Road & 261 Wangee Road)

It is noted that each application for subdivision should be considered in relation to its own context and set of circumstances. The above circumstances demonstrate that variations from the minimum allotment size should be deemed to be appropriate as the objectives of the development standard are achieved notwithstanding the non-compliance.

Test 2: The objective of the development standard is not relevant to the development (and therefore, it is unnecessary to comply with the standard).

Compliance with the minimum 450 m² site area is unreasonable or unnecessary in the circumstances because, as explained before, the objectives of the development standard are achieved, notwithstanding non-compliance with the standard.

The site does not achieve the necessary minimum site area to provide a density of development that is envisioned by the site's zoning or development standards, given that the site does not qualify to achieve the minimum lot size requirements outlined under Clause 4.1B of the CBLEP 2023 for an attached dwelling, boarding house, multi-dwelling housing or residential flat building development. Therefore, the objective of the development standard is not relevant to the development (and it is unnecessary to comply with the standard).

The proposed subdivision will retain the existing subdivision pattern in the locality, whilst proposing a residential development that is consistent with the surrounding pattern of development which provides a built form which enhances the streetscape. Furthermore, the proposed development contains two dwelling houses and the reduction in lot size will not impact the site functionality as dwelling houses are permitted within the R4 zone and the proposal will not result in any adverse impact on the streetscape presentation or to adjoining properties.

The adjoining properties are developed, and the existing pattern of development and the existing streetscape will be unaltered as a result of the proposed subdivision.

Test 3: Compliance with the standard would thwart or defeat the objective of the standard (and therefore it is unreasonable to require compliance).

The breach of the standard allows for a development that is consistent with the desired future character of the area, given the site's zoning, applicable development standards and planning controls. Compliance with the standard would be unreasonable or unnecessary, due to the existing controls being virtually abandoned or destroyed from the existing pattern of development due to the previous consents that have been granted at Wangee Road.

- The proposed subdivision will allow for a visually interesting building, that achieves high quality design for the occupants of the development and no adverse amenity impacts on the adjoining residents,
- The proposed new allotments are compatible with the existing development and subdivision pattern in the immediate context of the environment and with the emerging pattern of development in the locality.
- There will be no loss to any 'significant' views as a result of the breach of the standard,
- It is considered that the proposed non-compliances with the lot area does not result in any unreasonable impact and is appropriate for the orderly and economic use of the land, and
- The proposed development results in an improved urban design outcome and enhanced compliance.

The environmental planning benefits that are facilitated by the variation of the minimum lot size relate to a proposed subdivision and the achievement of the existing and desired future character of the precinct, where amenity impacts upon adjoining properties have been minimised. As previously discussed, given that the site does not achieve the minimum lot size requirement under the CBLEP 2023 to accommodate a permissible form of residential development and has minimal scope to due to the re-development of surrounding allotments, the proposed dwellings houses with Torrens Title Subdivision is ultimately a reasonable response to the prevailing pattern of development that achieves the objectives under Clause 4.1 of the CBLEP 2023.

Test 4: The standard has been abandoned by the Council through other approvals that exceed the standard.

It cannot be said that this development standard has been abandoned. However, compliance with the Clause 4.1 Minimum subdivision lot size development standard is also unreasonable or unnecessary in the circumstances of this case because the development standard has been abandoned for similar reasons in the area.

Prior to 23 June 2023, the subject site was zoned as R2 Low Density Residential in Area 1. Under this zoning, land with an area of 500 m² and a 15 m frontage was eligible for subdivision for dual occupancy (attached) under Clause 4.1A of the Canterbury-Bankstown Local Environmental Plan 2023, in which the subject site and surrounding properties complied with this requirement prior to the CBLEP 2023 amendment. Consequently, properties such as 259 Wangee Road and 274 Wangee Road received approval for Torrens Title Subdivision, along with numerous other properties along Wangee Street which contributed to the distinctive character of the neighbourhood that this proposal intends to integrate with, rather than compete against. The proposed subdivision will be consistent with the neighbourhood. This shows the standard abandoned by the Council through other approvals that exceed the standard.

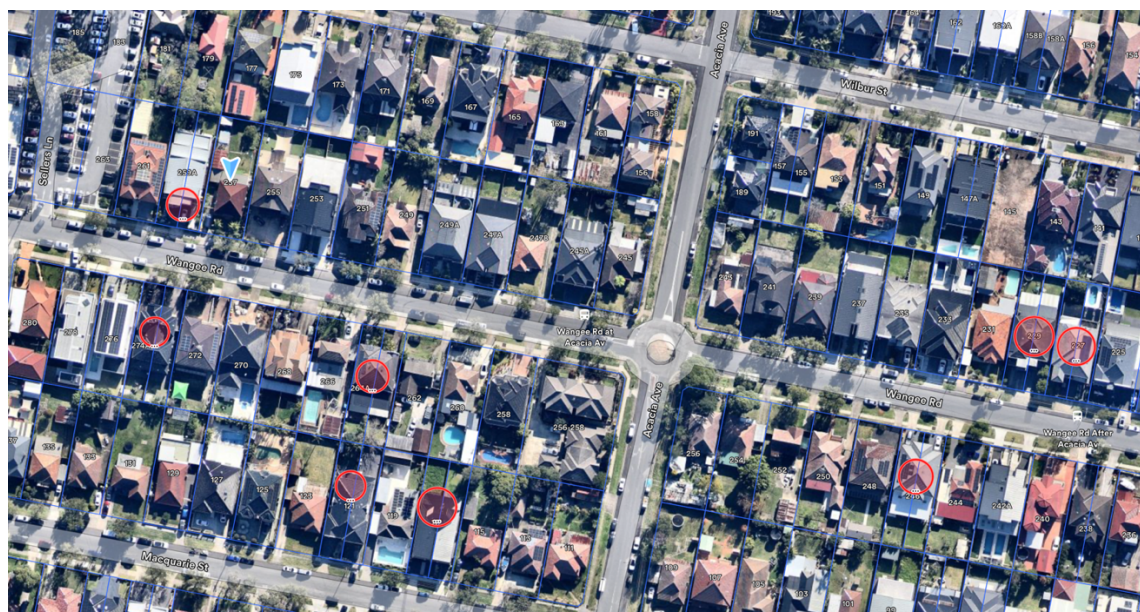


Figure 6: Aerial image showing the subdivision consistency (Red Circle) of the street and the irregular of the subject site at 257 Wangee Road.

Test 5: The zoning is unreasonable or inappropriate and therefore the development standard applying to that zoning is unreasonable or inappropriately applied to the site.

The zoning of the subject site is unreasonable or inappropriate and therefore the development standard applying to that zoning is unreasonable or inappropriately applied to the site.

The subject site is zoned R4 High Density Residential where following development permitted with consent under Canterbury-Bankstown Local Environmental Plan 2023

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Car parks; Centre-based child care facilities; Community facilities; Dwelling houses; Early education and care facilities; Environmental facilities; Environmental protection works; Exhibition homes; Flood mitigation works; Home businesses; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Recreation areas; Residential flat buildings; Respite day care centres; Roads; Secondary dwellings; Serviced apartments; Shop top housing

The subject site has an area of 613 m², which does not comply with the standards set by CBLEP 2023 and CBDP 2023 for developments other than dwelling houses. Most of the land along Wangee Street, where the subject site is situated, has already been redeveloped with dual occupancy and single dwellings. According to zoning requirements, there is no additional land available for redevelopment into high-density residential purposes on the same street. Therefore, the zoning is inappropriate and unreasonable for the subject site.

7. THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD. [cl. 4.6(3)(b)]

The variation relates to the minimum subdivision lot size and thus addresses the environmental planning considerations specific to this matter. The justification provided for the variation is specific to this application and does not encompass environmental planning grounds that could apply universally to all lands zoned R4 High Density Residential.

The rationale for justifying the variation in the minimum subdivision lot size on environmental planning ground is outlined as follows.

- The proposed lot sizes ensure adequate space for each dwelling, providing usable internal floor areas and private open space (POS) for both lots.
- The reduction in lot area does not negatively affect the existing subdivision pattern of the area. In fact, the shape, dimensions, and sizes of the lots align with those of many other properties along Wangee and Macquarie Streets, ensuring ongoing consistency.
- The development seamlessly extends the row of dwellings along the eastern side of Wangee Road, maintaining alignment with the established primary street setback to continue a cohesive streetscape. The new dwelling features suitable setbacks and incorporates design elements that harmonize with the area's character. Using brickwork as a foundation and lightweight cladding for the upper level reduces the overall bulk and scale, ensuring the new infill dwellings blends harmoniously with the existing architecture.
- The design and appearance of the proposal uphold the visual identity of the streetscape and do not appear overly bulk and scale from the street or neighbouring properties. The architectural

style harmonizes with the surrounding area and aligns with the envisioned future character of the locality.

- Each dwelling's private open space (POS) receives three hours of direct solar access.
- The reduced lot sizes do not cause any adverse environmental impacts upon adjoining properties. The lots can accommodate dwellings that align with the relevant objectives of the CBLEP 2023 and CBDP2023.

When addressing adequate environmental planning justifications, Preston CJ in “*Initial Action*” suggests that applicants can also address the Objectives of the Act under S1.3 to demonstrate grounds for justifying a variation to the minimum subdivision lot size. Clause 1.3 of the EP&A Act 1979 states 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. (emphasis added)

A development that aligns with the land use zoning of the site (R4 high density residential) fulfils the objectives under S1.3 of the EP&A Act 1979. The plans by Cad Plans Pty ltd particularly concerning the variation in minimum lot size, align with these objectives as follows:

- The development provides for residential land use (dwelling houses) in line with the CBLEP 2023.
- The development allow for increased residential density in accessible locations to maximise public transport patronage and encourage walking and cycling..
- The site has the capacity to support the proposed new lots and residential density sought.
- The proposal promotes a high standard of urban design, given that the proposal demonstrates a carefully planned infill development that integrates well with the surrounding urban environment.
- The proposal provides for the housing needs of the community, whilst also providing a variety of housing types within a high density residential environment.
- The proposal promotes a high standard of urban design and

- The proposal promotes a high standard of local amenity, given that the proposal will not cause any adverse environmental impacts to neighbouring properties in terms of bulk and scale, solar access or visual/acoustic privacy.

Based on the aforementioned factors, the consent authority can conclude that there are adequate environmental planning justifications to justify the variation.

8. OTHER MATTERS FOR CONSIDERATION

Consistency with the Zone Objectives:

Zone R4 High Density Residential.

1 Objectives of zone

- *To provide for the housing needs of the community within a high-density residential environment.*
- *To provide a variety of housing types within a high-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To allow for increased residential density in accessible locations to maximise public transport patronage and encourage walking and cycling.*
- *To promote a high standard of urban design and local amenity.*

The following provides a review of the zone objectives:

- ***To provide for the housing needs of the community within a high-density residential environment***

The development provides new housing to meet the needs of the community. The architectural design, massing, and overall density harmonize with neighboring residential properties on the street, thus being consistent with the surrounding locality.

- ***To provide a variety of housing types within a high-density residential environment.***

The proposed subdivision will make 2 distinct legal Titles on paper to ensure that both buildings can practically contribute to housing stock of the LGA (facilitate the potential for individual sale of each lot, and hence a more affordable price point for each lot rather than a much higher price for a combined site) and accommodate the affordable housing needs of the LGA.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents***

Not relevant to the site.

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

The proposed subdivision retains a residential use and will not conflict between land uses within this zone and land uses within adjoining zones.

- *To allow for increased residential density in accessible locations to maximise public transport patronage and encourage walking and cycling.*

The proposal provides two new 2 storey dwellings in place of a single, 1 storey dwelling in a locality that is well served by transport and access to employment, recreation, cultural and retail services. The proposed two storey dwellings are set against single and 2 storey forms and provide housing diversity to meet the needs of young families and downsizers.

The density and overall scale of the development is directly comparable to the development adjacent to the subject site and other similar developments in the street.

9. IS THE VARIATION WELL FOUNDED?

It is deemed that this issue has been sufficiently addressed in this submission. In conclusion, this Clause 4.6 variation is well substantiated in accordance with Clause 4.6 of the CBLEP 2023 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development.
- There are sufficient environmental planning grounds to justify the departure from the standards.
- The development meets the objectives of the standard to be varied (Minimum Subdivision Lot size) and objectives of the R4 High Density Residential zoning of the land.
- The development submitted aligns with the existing and future character envisioned for the locality.

Based on the above, the variation is considered to be well founded. The consent authority can be assured that all provisions of Clause 4.6 have been addressed, considering the merits of the proposed development.