

Statement of Environmental Effects



Subdivision into two Torrens title allotments,
Demolition and
Construction of two double storey dwelling houses with swimming pools,

At

Lot 198, DP 11603
257 Wangee Road Greenacre, NSW 2565

Date: 18 August 2024



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1. INTRODUCTION

This statement of environmental effects has been prepared by Ehup Pty Ltd to accompany a development application to the City of Canterbury Bankstown Council for the demolition of all existing structures, Torrens title subdivision to create two lots and construction of two new dwelling houses (attached) with swimming pool on separate allotments at 257 Wangee Road Greenacre NSW 2190. The application is being lodged, pursuant to Section 4.12 of the *Environmental Planning and Assessment Act 1979*.

The proposal complies with the relevant provisions for the residential development under the Canterbury-Bankstown Local Development Control Plan 2023. Furthermore, each dwelling complies with all development standards of dwelling houses on its own rights. The proposal has been designed to achieve the relevant provisions of Canterbury-Bankstown Local Environmental Plan 2023, and Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

The development is consistent with the R4 zone objectives and follows the built form, scale and design cues of established dwellings in the surrounding neighbourhood and character area. Whilst it includes a Clause 4.6 variations to minimum 450m² subdivision lot size under CBLEP 2023 the proposed form, scale, height, setbacks, private open space and landscape outcomes are compatible with the neighbouring properties and thus the development achieves the objectives and underlying intent of the standards. It can be noted that 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. Justifications for variation is detailed in the supporting Clause 4.6 variation prepared by Ehup Pty Ltd.

This Statement of Environmental Effects provides the following:

- Description of the site and surrounding development
- Description of the proposed development; and
- Assessment of the proposal in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*, Canterbury-Bankstown Local Environmental Plan 2023 and Canterbury-Bankstown Development Control Plan 2023.

This statement should be read in conjunction with the following documentation:

- Architectural drawings
- Landscape plan
- BASIX certificate
- Survey plans

2. SITE AND SURROUNDS

The subject site known as 257 Wangee Road, Greenacre and legally described as Lot 198, DP 11603. The site is rectangular in shape and has total area according to title of 613.2 m². The site has a 15.24m frontage to Wangee Road.

The land across the site falls consistently from western boundary at RL49.04 through the eastern boundary at RL47.80, at an average gradient of 8.1%.

The site contains to two cocos palm trees of less than 3m in height positioned in the front yard.

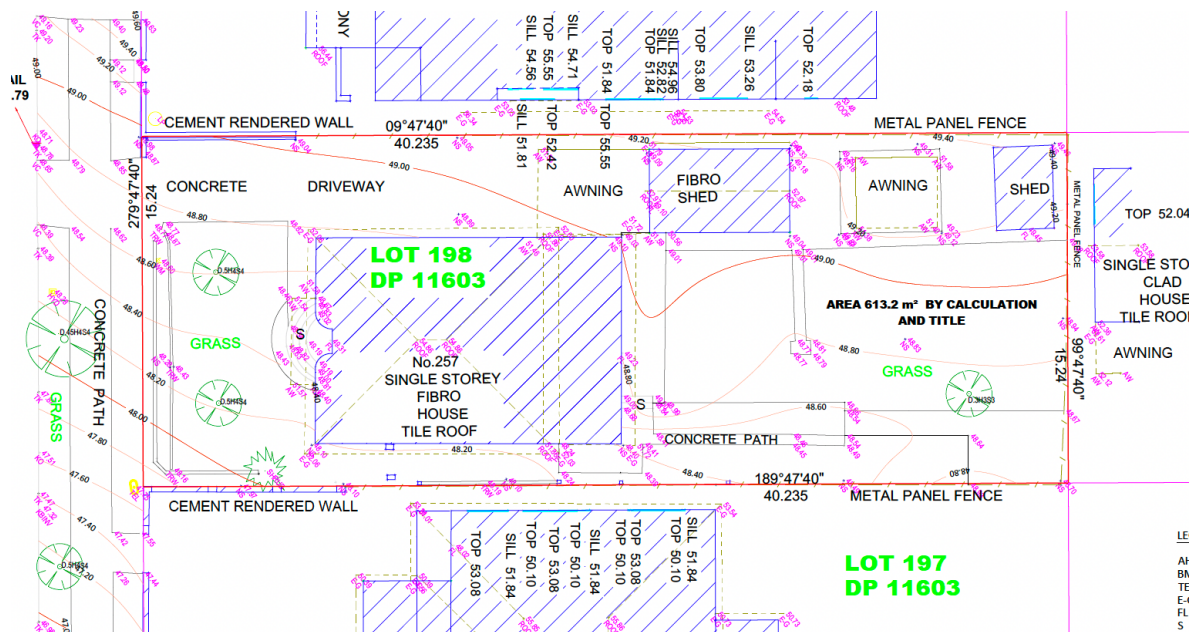


Figure 1: Depicts Survey Plan



Figure 2: View of the subject site from Wangee Road.

The site presently contains a single storey dwelling house and driveway access to a detached garage from Wangee Road. The existing dwelling house, ancillary structures and driveway access are to be demolished under this application.

Residential development within Wangee Road is not defined by a single architectural style, but instead ranges from original dwellings to more contemporary dual occupancy developments. The past few years have seen many new double storey single dwelling homes and dual occupancy home being constructed in Wangee Road and older dwellings undergoing extensive renovations. Future residential development in the locality is to preserve and enhance the landscape setting of the area and achieve compatibility with the established medium to high density residential characteristic.

The site is within R4 High Density Residential under the Canterbury-Bankstown Local Environmental Plan 2023. The site has been historically used as residential dwelling.



Figure 3: View of adjoining properties on Western side.



Figure 4: View of adjoining properties on Eastern side



Figure 5: view of properties on opposite of the subject property.

The site is within a medium-density residential neighbourhood, but it was rezoned to high-density residential in 2023. It's located in a short walking distance to retail shop, café, restaurant and medical centre along Waterloo Road to the west. It's within the short walking distance to regular bus services along Waterloo Road towards the city and western suburbs as well as parks, schools and hotels.

The site is not identified as an item of heritage, nor is it located within a heritage conservation area. The subject site is not within the immediate vicinity of heritage-listed items.

The site is within flood planning area.

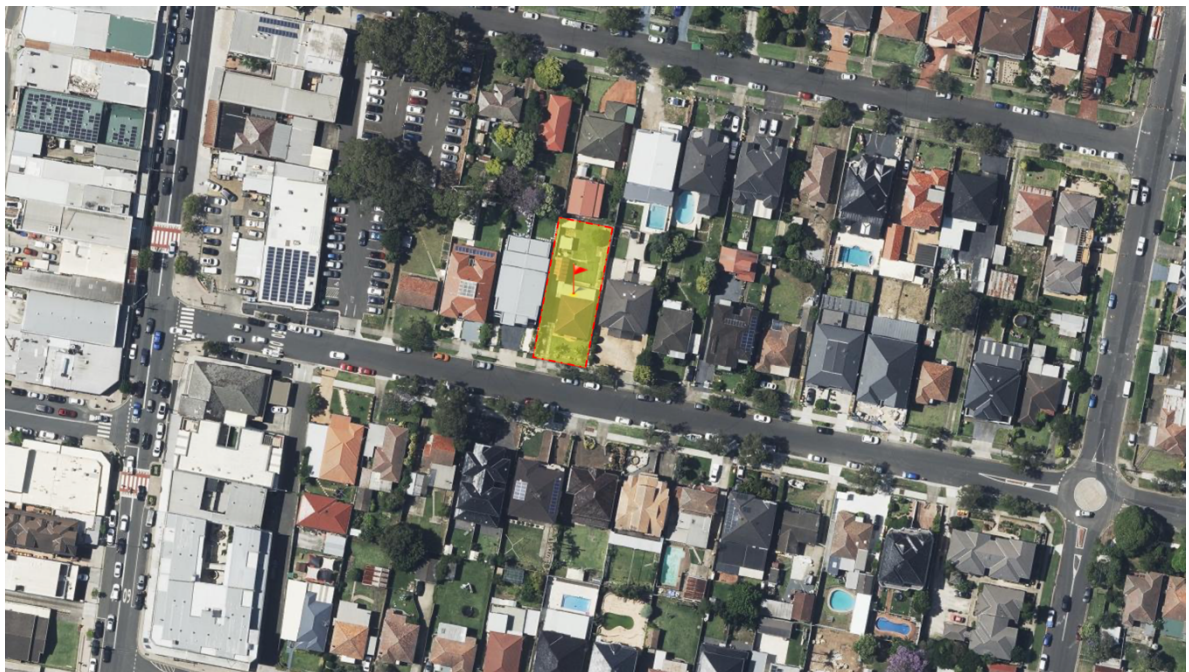


Figure 6: ariel image, Source: Six Map

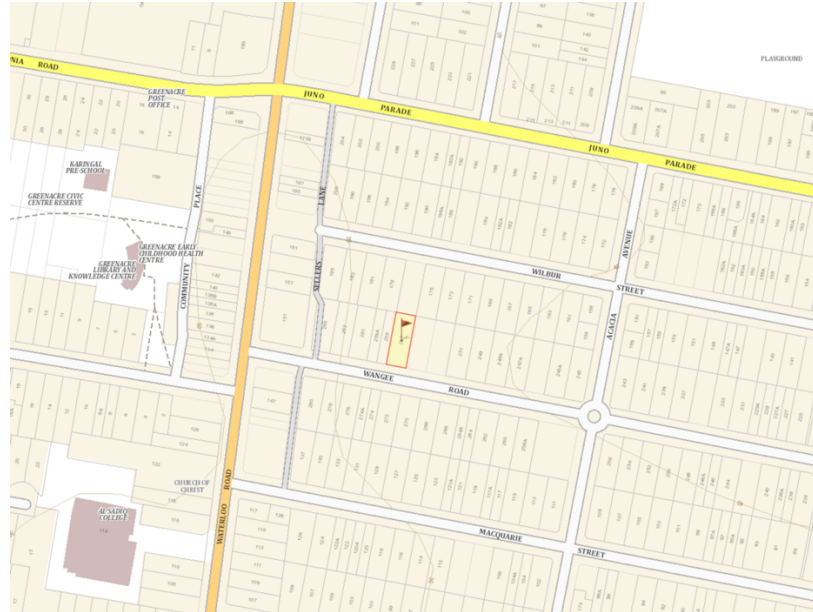


Figure 7: Location of the site, six map.

3. PROPOSAL

The proposed development seeks to undertake the following:

Stage 1: Torrent title subdivision of the parent lot to create two (2) lots.

Stage 2: Demolition and Construction of a double storey single dwelling on the each newly created lot with a swimming pool.

Stage 1 of the works will comprise Torren title subdivision of the site into two separate allotments such that each dwelling and associated open space is contained wholly within its own lot.

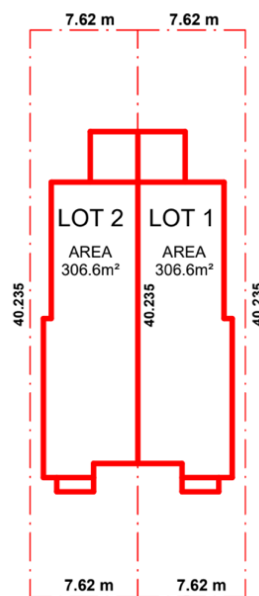


Figure 8: Proposed subdivision plan

The site has minimum subdivision lot size of 450 m². In supporting of the subdivision, a Clause 4.6 variation request has been prepared and attached as appendix 1.

The subdivision will create Lot 257 and Lot 257A comprising areas of 306.6 m² and 306.6 m² respectively. The proposed subdivision plan is shown in Figure 8.

Stage 2 of the works will comprise demolition of existing structure and construction of a single double story dwelling house with a swimming pool on each newly created lot. The dwelling houses will be attached to each other to compliment the streetscape. A new site landscaping scheme and stormwater drainage network is proposed for new dwellings.

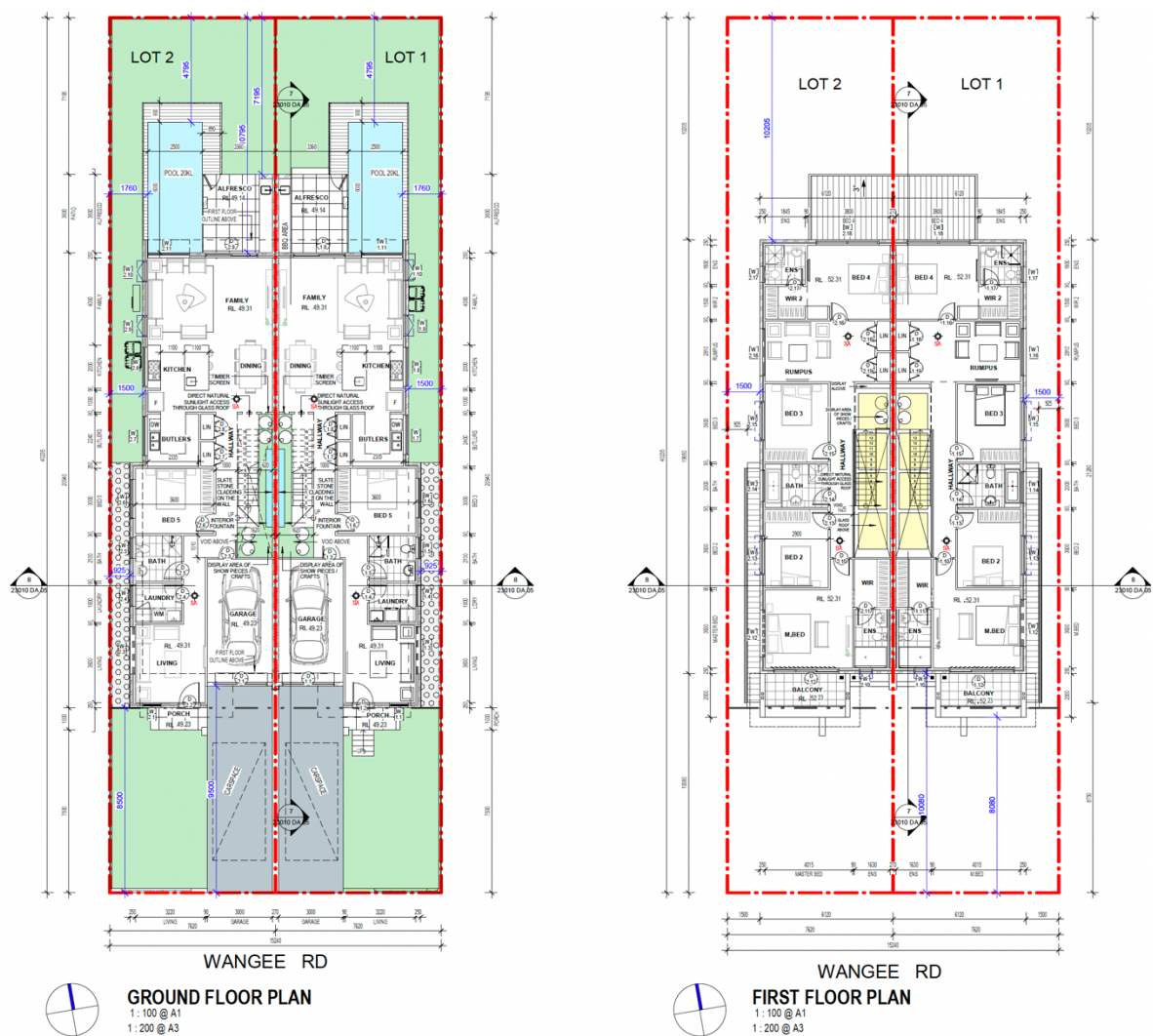


Figure 9: Proposed ground and first floor plan

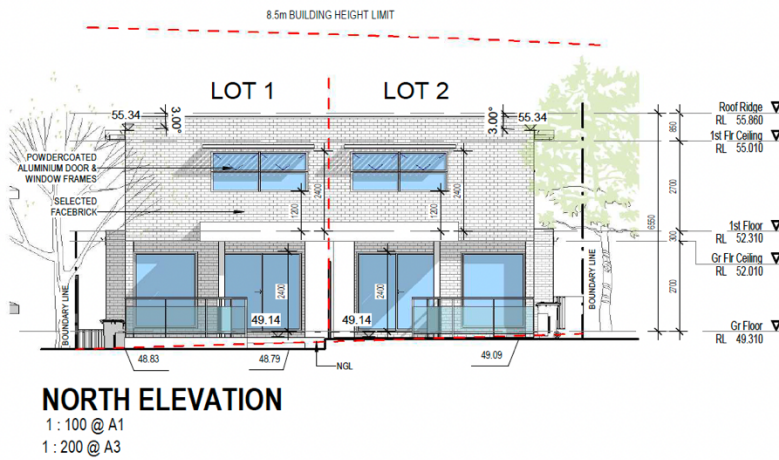


Figure 10: Proposed North and South Elevation



Figure 11: Proposed East and West Elevation.

4. SECTION 4.15 EVALUATION

Section 4.15 of the Environmental Planning and Assessment Act 1979 requires the consideration in the table below.

Clause		Assessment
<u>Section 4.15(1) Matters for consideration—general</u> <i>In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:</i>		
(a) the provision of:	I. any environmental planning instrument	An assessment has been provided against SEPPS and Canterbury-Bankstown Local Environmental Plan 2023 in part 4.1. of this SEE.
	II. any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority	The proposal has been considered in relation to clause 4.15 (1) (ii) in this SEE
	III. any development control plan	The development proposal has been considered against the planning objectives and provisions of the Canterbury-Bankstown Development Control Plan 2023, and no grounds for concern have been identified.
	IV. any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and the regulations (to the extent that they prescribe matters for the purposes of this paragraph),	The DA is not subject to planning agreement
	V. any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the	There are no coastal zone management plans relevant to the application.

	<i>development application relates,</i>	
<i>(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</i>		The proposed development does not have any likely impacts.
<i>(c) the suitability of the site for the development</i>		The land is appropriately zoned to permit the dwelling houses and the development meets the objectives of the Canterbury-Bankstown Local Environmental Plan 2023
<i>(d) any submissions made in accordance with this Act or the regulations.</i>		It is envisaged that any submissions made in relation to the proposal will be appropriately assessed by Council.
<i>(e) The public interest.</i>		The public interest would be served by approval of this development. The proposal includes positive economic, social and environmental impacts by creating construction jobs and better meeting needs of the building residents. It is considered that the development is consistent with Council's policies and does not result in any unreasonable impacts. Under the circumstances of the case, it is considered that the development is acceptable and should be supported.

4.1. Provisions of Relevant Environmental Planning Instruments (clause 4.15(1)(a)(i))

4.1.1 Considerable State Environmental Planning Policies

State Environmental Planning Policy	Comment
<p>State Environmental Planning Policy (Biodiversity and Conservation) 2021</p> <p>This SEPP contains:</p> <ul style="list-style-type: none"> <i>planning rules and controls for the clearing of native vegetation in NSW on</i> 	<p><u>Chapter 2 Vegetation in Non-rural Areas</u> Chapter 2 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (the Biodiversity and Conservation SEPP) contains planning controls for the removal of vegetation on the land within non-rural areas of the State. The policy</p>

<p><i>land zoned for urban and environmental purposes that is not linked to a development application.</i></p> <ul style="list-style-type: none"> - <i>the land use planning and assessment framework for koala habitat.</i> - <i>provisions seeking to protect and preserve bushland within public open space zones and reservations.</i> - <i>provisions to support the water quality objectives for the Sydney drinking water catchment.</i> - <i>provisions to protect the environment of the Hawkesbury- Nepean River system.</i> - <i>provisions to manage and improve environmental outcomes for Sydney Harbour and its tributaries.</i> - <i>provisions to manage and promote integrated catchment management policies along the Georges River and its tributaries.</i> 	<p>aims to protect the biodiversity values of trees and vegetation in non-rural areas and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.</p> <p>The proposed development does not require the removal of any significant trees or vegetation. Therefore, no further assessment is required in this regard.</p> <p><u>Chapter 3 – Koala habitat protection</u> It contains provisions from the Koala SEPP 2020 and, as an interim measure, applies in the NSW core rural zones of RU1, RU2 and RU3, except within the Greater Sydney and Central Coast areas.</p> <p>Given the sites location and zoning this chapter is not applicable to the development.</p> <p><u>Chapter 4 Koala habitat protection 2021</u> Chapter 4 – contains the land-use planning and assessment framework from the former Koala SEPP 2021 for koala habitat within Metropolitan Sydney and the Central Coast and applies to all zones except RU1, RU2 and RU3 in the short term.</p> <p>The site is not identified as containing koala habitat and accordingly this chapter is not applicable to this development.</p> <p><u>Chapter 5 River Murray lands</u> Chapter 5 – contains the provisions from the former Murray REP, which establishes a consistent and co-ordinated approach to environmental planning and assessment along the River Murray.</p> <p>Given the sites location, this chapter is not applicable to this development.</p> <p><u>Chapter 6 Bushland in urban areas</u> Chapter 6 of the Biodiversity and Conservation SEPP aims to ensure that bushland is preserved within urban area.</p> <p>The site is not zoned Public Open Space and is not identified as being within a reservation and accordingly this chapter is not applicable to this development.</p>
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	<p><u>Chapter 6. Part 10.5 - Heritage provisions</u></p> <p>This Part of the SEPP applies as the matters referred in this part must be taken into by consent authorities before granting consent to development under Part 4 of the Act.</p>
<p>State Environmental Planning Policy (Sustainable Buildings) 2022</p>	<p>The proposal is deemed to be 'BASIX affected development', and accordingly a BASIX certificate for each dwelling have been prepared and accompany the application. The proposal is capable of meeting water and electricity saving targets. The requirements outlined in BASIX certificates are addressed in the proposal.</p>
<p>State Environmental Planning Policy (Housing) 2021</p> <p>This SEPP relates to:</p> <ul style="list-style-type: none"> - <i>Boardinghouses, build-to-rent, seniors, group homes, secondary dwellings, social housing, co- living housing, independent living units, retention of existing affordablehousing, Dual occupancies and semi-detached dwellings in Zone R2</i> 	<p>Not applicable</p>
<p>State Environmental Planning Policy (Resilience and Hazards) 2021</p> <p>This SEPP contains planning provisions:</p> <ul style="list-style-type: none"> - <i>for land use planning within the coastal zone, in a manner consistent with the objects of the Coastal Management Act 2016.</i> - <i>to manage hazardous and offensive development.</i> - <i>which provides a state-wide planning framework for the remediation of contaminated land and to minimise the risk of harm.</i> 	<p>The site, historically, has been used for residential purposes and has not been used for any activity causing contamination. Therefore, there is no need for any further investigation in this regard.</p>
<p>State Environmental Planning Policy (Precincts—Western Parkland City) 2021</p>	<p>There are no specific provisions contained in these SEPPs which are applicable to the subject development.</p>

4.1.2 Canterbury-Bankstown Local Environmental Plan 2023

Zone (Clause 2.2)	Objectives	Comply
R4 High Density Residential.	<ul style="list-style-type: none"> <i>To provide for the housing needs of the community within a high density residential environment.</i> <i>To provide a variety of housing types within a high density residential environment.</i> <i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i> <i>To allow for increased residential density in accessible locations to maximise public transport patronage and encourage walking and cycling</i> <i>To promote a high standard of urban design and local amenity.</i> 	<p>The proposed development fulfills the R4 zone's objectives by offering a high-impact residential solution that addresses the local housing needs.</p> <p>The development's design aligns with the established residential style in the area and will notably enhance the site's appearance through a blend of contemporary architecture and suitable landscaping efforts.</p> <p>The proposed development contains two dwellings instead of one which allows increased residential density</p> <p>Ultimately, this project will establish a positive example for future developments in Greenacre.</p>
Part 2 Permitted or prohibited development		
Relevant Clause	Control	Comply
Clause 2.2 – Zoning The site is zoned R4 High Density Residential.	<i>The proposed development is defined in the plans as an “dwelling house” (as defined under the CBLEP) means a building containing only one dwelling</i>	Yes The proposed “single dwelling” development on each lot is permissible in the zone subject to development consent from Council.
2.7 Demolition requires development consent	<i>The demolition of a building or work may be carried out only with development consent.</i>	The proposal involves demolition works which are permissible with consent. In any event it is expected that the consent authority would impose relevant standard DA conditions, as applicable, on any consent to manage impacts which may arise during demolition.

Relevant Clause	Control	Comply
4.1.3 Minimum Subdivision Lot Size.	<i>Minimum subdivision lot size on the Lot Size Map in relation to that land is 450 m².</i>	Non-Compliant Proposal: Lot 1 – 306.6 m ² Lot 2 – 306 m ² (variation requested)
4.3 Height of Buildings –13m	<i>The clause provides that the height of any building is not to exceed the maximum height on the Height of Buildings Map, which specifies maximum height of 13m to the subject site.</i>	A maximum height is achieved to 8.5 and is therefore compliant.
4.4 Floor Space Ratio (FSR) – 1:1	<i>The LEP provides for an FSR of 1:1 on the site</i>	Complied Lot 1- 0.65:1 Lot 2 – 0.65:1
4.5 Calculation of floor space ratio and site area		Yes
4.6 Exceptions to development standards	Exceptions sought under 4.6 clause.	Minimum subdivision lot size variation sought, refer to appendix 1.
Part 5 Miscellaneous provisions		
Relevant Clause	Control	Comply
5.10 Heritage conservation		The site is not identified as a heritage item nor located within a heritage conservation area nor are any located in the direct vicinity of the site.
5.11 Bush fire hazard reduction		This property is not affected by bush fire.
5.21 Flood Planning		This property is not affected by flood planning.
Part 6 Additional local provisions		
Relevant Clause	Control	Comply
6.1 – Acid sulphate soils		The site is not identified as being affected on the Acid

		Sulfate Soils Map in the Canterbury Bankstown Local Environmental Plan 2023
6.2 - Earthworks		No significant excavation is proposed as part of this application. Council can be satisfied that the proposed demolition of the existing structures across the site and minor fill (max 1 m) would not have an adverse impact upon the drainage patterns and soil stability in the locality and that the proposal would not have adverse impact upon future redevelopment potential of the land
6.9 Essential Services	Adequate services are available to the site	The site is fully serviced by water, electricity, sewage and stormwater infrastructure and appropriate conditions of consent can be imposed to this effect
6.15 Design excellence	The propose development is not subject to Design Excellence	<p>NA</p> <p>The proposal presents modern dwelling houses designed to meet high standards in architecture and urban design. It aims to achieve excellence in design by considering street frontage.</p> <p>The development aligns with the desired character of the locality under its R4 zoning, ensuring minimal impact on neighbouring properties through setbacks and design articulation. It integrates a variety of building materials that blend contemporary style with local context, enhancing the streetscape visually.</p> <p>Additionally, the proposal includes landscaping and adheres to ecologically sustainable principles, contributing positively to the neighbourhood's cohesiveness and housing diversity in Greenacre</p>

4.1.3 Canterbury-Bankstown Development Control Plan 2023

The table below provides detail on the development standards relevant to the current proposal.

Canterbury-Bankstown Development Control Plan 2023			
Clause	Controls	Comment	Comply
Chapter 2	Requirements Applying to all Types of Development		
2.1	Site Analysis	A brief site analysis is provided above in Section 2. The proposed new dwelling is consistent with the character of lots in the locality.	Yes
2.2	Flood risk management	The land is not subject to flooding.	Yes
2.3	Tree Management <i>2.1 A person must not cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy, lop or otherwise remove a substantial part of any prescribed tree defined in clause 2.3 or carry out excavation and earthworks within the tree protection zone except with a permit from Council and subject to any conditions specified in the permit.</i>	The proposed development does not involve any prescribed tree removal within the property. Existing Callistemon on the footpath needs to be removed due to construction of the driveway.	Yes
Chapter 3	Parking Requirements		
3.2	Off-Street Parking Rates <i>Dwelling houses – 2 car spaces</i>	Provided	Complied
	Access driveway width and design <i>3.8 The location of driveways to properties should allow the shortest, most direct access over the nature strip from the road.</i> <i>3.9 The appropriate driveway width is dependent on the type of parking facility, whether entry and exit points are combined or separate, the</i>	The location of driveways to properties allows the shortest, most direct access over the nature strip from Jones Avenue. 3m width driveway provided	Yes

	<p><i>frontage road type and the number of parking spaces served by the access facility.</i></p> <p><i>3.10 Driveway widths for existing dwellings and extensions to the existing properties are assessed on their merits.</i></p> <p><i>3.11 For new residential development, necessary clear driveway widths are provided in the following table:</i></p> <table><tr><td><i>Driveway width</i></td><td><i>Minimum clear width</i></td></tr><tr><td><i>One-way</i></td><td><i>3m</i></td></tr><tr><td><i>Two-way</i></td><td><i>5.5</i></td></tr></table>	<i>Driveway width</i>	<i>Minimum clear width</i>	<i>One-way</i>	<i>3m</i>	<i>Two-way</i>	<i>5.5</i>		
<i>Driveway width</i>	<i>Minimum clear width</i>								
<i>One-way</i>	<i>3m</i>								
<i>Two-way</i>	<i>5.5</i>								
3.3	<p>Waste Management</p> <p><i>3.3 Development must provide an adequate sized bin storage area behind the front building line to accommodate all allocated bins.</i></p> <p><i>3.4 The location of the bin storage area must not adversely impact on the the streetscape, building design or amenity of dwellings.</i></p> <p><i>3.5 The location of the bin storage area should ensure this area:</i></p> <p><i>(a) is screened or cannot be viewed from the public domain; and</i></p> <p><i>(b) is away from windows of habitable rooms to reduce adverse amenity impacts associated with noise, odour and traffic.</i></p>	<p>Provided</p> <p>Proposed bin storage area does not adversely impact the streetscape, building design or amenity of the dwelling.</p> <p>Achieved</p>	Yes						
3.7	<p>Landscape</p> <p><i>2.1 New landscaping is to complement the existing street</i></p>	<p>A concept Landscape Plan has been submitted with application.</p>	Yes						

	<p><i>landscaping and improve the quality of the streetscape.</i></p> <p><i>2.3 The landscape design is to contribute to and take advantage of the site characteristics.</i></p> <p><i>3.1 Development must retain, protect and enhance indigenous/native vegetation and natural site features and incorporate it into the landscape design.</i></p>	All controls related to landscaping have been taken into consideration.	
Chapter 5	Residential Accommodation		
2	Dwelling Houses		
2.1	<p>Storey limit –</p> <p>Two storey</p>	<p>Both dwellings</p> <p>Two storey proposed</p>	Yes
2.2	The siting of dwelling houses and landscape works are compatible with existing slope and contours of the site and any adjoining sites	The siting of both dwellings and landscape works are compatible in all respects.	
2.3	<p>FILL</p> <p>Any reconstituted ground level on the site within the ground floor perimeter of dwelling houses must not exceed a height of 1m above the ground level (existing). For the purposes of this clause, the ground floor perimeter includes the front porch.</p>	Maximum 1m fill proposed on eastern side.	Yes
2.4	Any reconstituted ground level on the site outside of the ground floor perimeter of dwelling houses must not exceed a height of 600mm above the ground level (existing) of an adjoining site. For the purposes of this clause, the ground floor perimeter includes the front porch.	Achieved	Yes
2.5	Setback restrictions –	Not applicable	NA

	<i>The erection of dwelling houses is prohibited within 9 metres of an existing animal boarding or training establishment.</i>		
2.6	<p>Primary Street setbacks –</p> <p><i>The minimum setback for a building wall to the primary street frontage is:</i></p> <p><i>(a) 5.5 metres for the first storey (i.e. the ground floor); and</i></p> <p><i>(b) 6.5 metres for the second storey.</i></p>	<p>8.5m for ground floor provided</p> <p>10.8 for first floor provided</p>	Yes
2.7	<p>Secondary Street setbacks -</p> <p><i>The minimum setback to the secondary street frontage is:</i></p> <p><i>(a) 3 metres for a building wall; and</i></p> <p><i>(b) 5.5 metres for a garage or carport that is attached to the building wall.</i></p>	Not applicable.	NA
2.8	<p>Side setbacks –</p> <p><i>For the portion of the building wall that has a wall height less than or equal to 7 metres, the minimum setback to the side boundary of the site is 0.9 metre.</i></p>	0.925m provided	Yes
2.9	<i>For the portion of the building wall that has a wall height greater than 7 metres, the minimum setback to the side boundary of the site is 1.5 metre.</i>	1.5m provided	Yes
2.11	<p>Private Open space –</p> <p><i>Dwelling houses must provide a minimum 80m² of private open space behind the front building line. This may be in the form of a single area or a</i></p>	<p>Provided:</p> <p>Dwelling 1= 80m²</p> <p>Dwelling 1= 80m²</p>	Yes

	<i>sum of areas provided the minimum width of each area is 5 metres throughout.</i>		
2.12	<p>Access to sunlight –</p> <p><i>At least one living area must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid–winter solstice. Council may allow light wells and skylights to supplement this access to sunlight provided these building elements are not the primary source of sunlight to the living areas.</i></p>	The Shadow Diagrams submitted with this application demonstrate that the internal living area of the dwelling receives the minimum required solar access.	Yes
2.13	<p><i>At least one living area of a dwelling on an adjoining allotment must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid–winter solstice. Where this requirement cannot be met, the development must not result with additional overshadowing on the affected living areas of the dwelling.</i></p>	There is no overshadowing on the adjoining allotment	Yes
2.14	<p><i>A minimum 50% of the private open space required for the dwelling and a minimum 50% of the private open space of a dwelling on an adjoining allotment must receive at least 3 hours of sunlight between 9.00am and 5.00pm at the equinox. Where this requirement cannot be met for a dwelling on an adjoining allotment, the development must not result with additional overshadowing on the affected private open space.</i></p>	The Shadow Diagrams submitted with this application demonstrate that the private open space areas of dwellings receive the minimum required solar access.	Yes
2.15	<p><i>Development should avoid overshadowing any existing solar hot water system, photovoltaic panel or other solar collector on the allotment and neighbouring</i></p>	The proposed development will not result in overshadowing of any existing solar hot water system, photovoltaic panel or other solar collector on neighbouring properties	Yes

	<i>properties.</i>		
2.16	<p>Visual privacy –</p> <p><i>Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling, the development must:</i></p> <p><i>(a) offset the windows between dwellings to minimise overlooking; or</i></p> <p><i>(b) provide the window with a minimum sill height of 1.5 metres above floor level; or</i></p> <p><i>(c) ensure the window cannot open and has obscure glazing to a minimum height of 1.5 metres above floor level; or</i></p> <p><i>(d) use another form of screening to the satisfaction of Council.</i></p>	Windows on the first-floor levels have been carefully sited, offset and feature increased sill heights where necessary to avoid direct view into adjoining properties.	yes
2.17	<p><i>Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where:</i></p> <p><i>a) the window is to a bedroom, bathroom, toilet, laundry, storage room, or other non-habitable room; or</i></p> <p><i>b) the window has a minimum sill height of 1.5 metres above floor level; or</i></p> <p><i>c) the window has translucent glazing to a minimum height of 1.5 metres above floor level; or</i></p> <p><i>d) the window is designed to prevent overlooking of more than 50% of the private open space of a lower-level or adjoining dwelling.</i></p>	The proposed development is situated within a suitable building envelope on the site and does not provide for overlooking into adjoining private open space areas. The proposed side and rear windows on the first floor level have been carefully sited and feature increased sill heights where necessary.	Yes
2.18	<i>Council may dwelling houses to have an upper floor side or rear balcony solely where the balcony is not accessible from a living area or hallway, and the balcony design:</i>	A first-floor balcony is proposed on the façade of Dwelling and will not provide for overlooking of adjoining properties	Yes

	<i>a) does not have an external staircase; and b) does not exceed a width of 1.5 metres throughout; and c) incorporates a form of screening to the satisfaction of Council such as partially recessing the balcony into the building.</i>		
2.19	<i>Council does not allow dwelling houses to have roof-top balconies and the like</i>	Roof-top balconies are not proposed.	NA
Building design			
2.20	<i>The maximum roof pitch for dwelling houses is 35degrees.</i>	3 degrees proposed	Yes
2.21	<i>Council may allow dwelling houses to have an attic provided the attic design: (a) accommodates no more than two small rooms (for the purposes of a bedroom and/or study) and a bathroom plus an internal link to the storey below; and (b) ensures the attic does not give the external appearance of a storey.</i>	Not applicable	NA
2.22	<i>The design of dormers must: (a) be compatible with the form and pitch of the roof; and (b) must not project above the ridgeline of the main roof; and (c) must not exceed a width of 2 metres; and (d) the number of dormers must not dominate the roof plane.</i>	Not applicable	NA
2.23	<i>Development in the foreshore protection area (refer to map in Appendix 1) must use non-reflective materials that are compatible with the natural characteristics and colours of the area (such as olive green, grey and dark brown).</i>	Not applicable	NA
Building design (car parking)			

2.25	<p><i>Development must locate the carparking spaces behind the front building line with at least one covered car parking space for weather protection. Despite this clause, Council may allow one car parking space to locate forward of the front building line provided:</i></p> <p><i>(a) the car parking space forward of the front building line is uncovered and located in a stacked arrangement on the driveway in front of the covered car parking space; and</i></p> <p><i>(b) the covered car parking space is setback a minimum 6 metres from the primary and secondary street frontages.</i></p>	<p>One car parking space forward of the front building line is uncovered and located in a stacked arrangement on the driveway in front of the internal garage.</p> <p>The internal car parking space is setback 9.5 metres from the primary street.</p>	Complied
2.27	<p>Garages –</p> <p><i>Where development proposes a garage with up to two carparking spaces facing the street, Council must ensure the garage architecturally integrates with the development and does not dominate the street facade.</i></p>	<p>A garage is proposed facing the street which is architecturally integrated with the development and the development does not dominate street façade.</p>	Yes
2.28	<p><i>Where development proposes a garage with more than two carparking spaces facing the street, Council must consider the architectural merit of the development and may allow the garage provided:</i></p> <p><i>(a) the building is at least two storeys in height, and</i></p> <p><i>(b) the garage is architecturally integrated with the upper storey by:</i></p> <p><i>(i) ensuring the garage does not project more than 3 metres forward of the upper storey street facade; and</i></p> <p><i>(ii) designing a covered balcony, rooms or other architectural features of the</i></p>	Not Applicable	<p>Yes</p> <p>Yes</p>

	<i>upper storey to extend over the garage roof.</i>		
2.29	<p>Landscape-</p> <p><i>Development must retain and protect any significant trees on the site and adjoining sites. To achieve this clause, the development may require a design alteration or a reduction in the size of the dwelling house.</i></p>	The proposed development does not require the removal of any significant trees or vegetation.	Yes
2.30	<p><i>Development must landscape the following areas on the site by way of trees and shrubs with preference given to native vegetation endemic to Canterbury-Bankstown (refer to the Landscape Guide for a list of suitable species):</i></p> <p><i>(a) a minimum 45% of the area between the dwelling house and the primary street frontage; and</i></p> <p><i>(b) a minimum 45% of the area between the dwelling house and the secondary street frontage; and</i></p> <p><i>(c) plant at least one 75 litre tree between the dwelling house and the primary street frontage (refer to the Landscape Guide for a list of suitable trees in Canterbury-Bankstown); and</i></p> <p><i>(d) for development in the foreshore protection area (refer to map in Appendix 1), plant native trees with a mature height greater than 12 metres adjacent to the waterbody.</i></p>	<p>A landscape plan has been submitted with this application.</p> <p>Achieved</p> <p>Achieved</p> <p>.</p>	Yes
Section 13	Swimming pools and spas		
13.12	<i>Swimming pools and spas must locate behind the front building line.</i>	Achieved	Yes

13.13	<i>The minimum setback between the waterline of swimming pools/spas and the site boundary is 1 metre.</i>	1.7 mere proposed	Yes
13.14	<i>Where Council allows swimming pools/spas within 30 metres of the high-water mark of the Georges River and its tributaries: (a) the maximum height of the swimming pool/spa is 300mm measured above the ground level (existing); and (b) the swimming pool/spa fence must be an open style fence.</i>	Not Applicable	NA

4.2 Section 4.15(1)(a)(iiia) Any Planning Agreement that has been entered into under section 7.4,

or

any draft planning agreement that a developer has offered to enter into under section 7.4,

Given the proposal at hand, it is considered that planning agreements are not required.

5. CONCLUSION

The proposed development has been assessed in accordance with Section 4.15 of the Environmental Planning & Assessment Act, 1979 (as amended) & relevant State & Council planning controls. It is a permissible form of development within the R4 High Density Residential zone & satisfies Council's relevant planning standards & controls.

The proposed development satisfies the objectives of the Environmental Planning & Assessment Act, 1979, the aims of the Canterbury-Bankstown LEP 2023 & the objectives of the R4 High Density Residential zone. It is considered that all relevant planning matters have been taken into consideration in the preparation of this proposal. It will provide a high-quality modern design, which will ensure its positive impact on the streetscape of Wangee Road. The proposed development will assist with the improvement of the streetscape by providing a high-quality contemporary building that will contribute to improving the value of property on the street. All utility services are available to the site & the proposed development. Overall, the subject site is well serviced by existing infrastructure.

It is considered that the proposed development will have a positive effect on the social & economic environment of the area. The proposed development will not adversely impact on the amenity of the surrounding area. It will provide a high-quality development reinforcing the functions of the streetscape. Council is requested to consider the benefits of the proposed development & therefore should approve the Development Application.

APPENDIX 1: Clause 4.6 Variation Request

**CLAUSE 4.6 TO CLAUSE 4.1
(MINIMUM SUBDIVISION LOT SIZE)**

OF

CANTERBURY-BANKSTOWN LOCAL ENVIRONMENTAL PLAN 2023

257 WANGEE ROAD, GREENACRE

August 2024

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

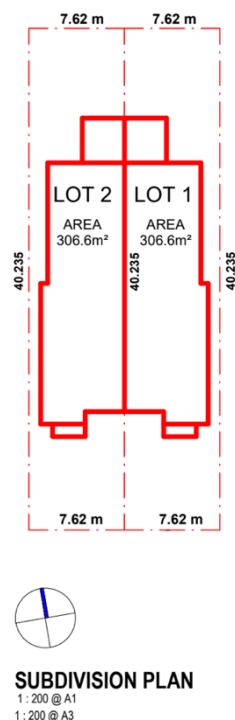


Figure 2: Excerpt of proposed subdivision of Lot 198, DP 11603

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-compliance 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 CBDPC 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.