

CLAUSE 4.6 ASSESSMENT

The proposed development seeks a variation to development standard relating to the lot size of Co-Living house under Canterbury - Bankstown Council LEP 4.1B Minimum lot sizes and special provisions for certain dwelling identifies for this development site a 566.6 sq m which the required of 800 sqm under SEPP2021.

The extent of the variation is shown in the figure below.

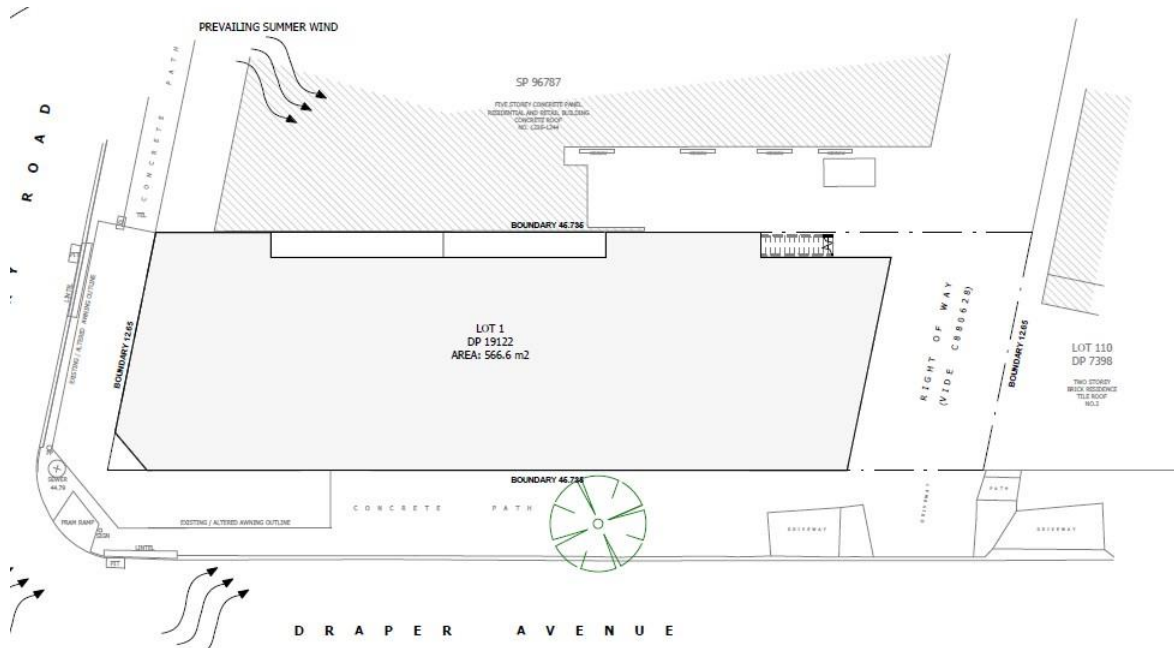


Figure 1: Site Plan highlighting the extend of the foreshore building line development standard variation.

Clause 4.6(3) states that:

“Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- *that there are sufficient environmental planning grounds to justify contravening the development standard”.*

To support the non-compliance, the applicant has provided a request for a variation to the minimum lot size of the Co-Living house in accordance with Clause 4.1B of Canterbury- Bankstown LEP. The Clause 4.6 request for variation is assessed as follows:

Is the planning control in question a development standard?

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

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

accommodate setbacks to adjoining land, private open space and landscaped areas, play areas, pedestrian access, set down and pick up areas, car parks, driveways and vehicle manoeuvring areas,

- (c) to minimise the likely adverse impact of development on the amenity of the area,
- (d) to require the consolidation of 2 or more lots where the area or width of an existing lot is inadequate,
- (e) 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
- (f) to prevent fragmentation or isolation of land.

The Planning controls.

In addition to the LEP, the following environmental planning instruments apply to the site:

- **State Environmental Planning Policy (Housing) 2021**

What are the underlying objectives of the development standard?

The object of this section is to identify development standards for particular matters relating to development for the purposes of Co-Living houses that, if complied with, prevent the consent authority from requiring more onerous standards for the matters UNDER CI 67 SEPP2021. So, the main objectives of Co-Living house Under Canterbury Bankstown DCP is :

1. To ensure the building form, building design and landscape of Co-Living houses are compatible with the suburban character of the residential areas.
2. To ensure the building form and building design of Co-Living houses provide appropriate amenity to residents in terms of access to sunlight and privacy.
3. To ensure the building form and building design of Co-Living houses do not adversely impact on the amenity of neighbouring sites in terms of visual bulk, access to sunlight and privacy.
4. To minimise the visual impact of off-street parking on the streetscape.
5. To require landscape as a key characteristic in the development.

Compliance is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a))

There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6. In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ set out ways of establishing that compliance with a development standard is unreasonable or unnecessary.

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*

3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

The Clause 4.6 Statement is prepared in consideration of the recent court cases and their judgements are below:

- Nordea Capital Pty Ltd v Parramatta City Council [2017] NSWLEC 1759
- Sybele Christopher v Mosman Council [2020] NSWLEC 1140
- Ray Saar & Anor v Canterbury-Bankstown Council [2017] NSWLEC 1340

Comment:

- *The council supported to amalgamate this lot with the neighbouring property. However, few years before the council let the neighbouring property to build the development separately. Now this is an isolated side, and the variation of lot sizes will not make any impact on overshadowing, streetscape amenity, over development etc.*
- *In terms of bulk, height, scale and context, the development is appropriate for the area, minimises impacts, retains the area's amenity, and reflects the desired future character of the area. The site will be of sufficient size to provide for the buildings proposed as well as for vehicular and pedestrian access, whilst retaining the site's topographical features.*
- *In terms of the applicable objectives of the B2 Local Centre zone, the proposed development has a contemporary design, with enhanced landscaping, and which minimises view loss.*

Clause 4.6(3)(b) are there sufficient environmental planning grounds to justify contravening the standard.

In terms of the environmental planning grounds in the request which seek to justify contravening the standard, they can be summarized as follows:

- The proposal responds positively to the topography of the site and the DCP contemplates applying flexibility on sites which is corner lot.
- The development, including the non-compliant lot size, is unlikely to result in adverse amenity impacts for neighbors in terms of privacy or view loss due to corner lot. Solar access provision for adjoining properties also complies with the DCP. The proper setback also complaint.
- The side elevations are also highly articulated to break up built form and reduce bulk and scale.

Clause 4.6(4) states that:

“Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,”

The proposal meets the objectives of the standard as follows:

- It is not possible to amalgamate the site with adjoining properties, as the council already allowed the neighbouring building to develop individually. South and West side is adjacent with the road and no possibility for the future amalgamation in future.
- Notwithstanding its size, the amalgamation plan in the DCP for the precinct also shows the site developed in isolation rather than proposing its amalgamation with adjoining sites. Even if it were amalgamated, the built form outcome would be the same if it reflected the DCP Masterplan.
- Given the above, and the fact that to not allow the development because of the lot size would sterilise the site, it was unreasonable or unnecessary to comply with the minimum lot size requirement.

The proposal is consistent with the objectives of the B2 Local Centre as follows:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To provide for certain residential uses that are compatible with the mix of uses in local centres.
- To promote a high standard of urban design and local amenity.

The proposed Co-Living house provides for the housing needs through the provision of an additional-floor area to suit the needs of the occupants, within a local center area of mixed development structures in the locality.

The siting of the development over the existing built form results in a development that has been sensitively designed to minimize visual and environmental impacts upon the amenity of the surrounding area and the setting of the locality.

The area of non-compliance does not impact upon amenity of the adjoining sites, as the breaches in lot sizes will not impact due to its isolated site.

Clause 4.6(b) the concurrence of the Secretary has been obtained.

An assessment of the written request against Clause 4.6 (3)(a) and (b) Including comment about whether the request demonstrates the following:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The application was supported by a Clause 4.6 Development Standard variation request (prepared by Zubya Siddika). In this instance the variation request is considered adequate, particularly having regard to the constraints of the site.

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there is an absence of any unreasonable impacts of the proposed non-compliance on the environmental quality of the locality and amenity of adjoining properties in terms of overshadowing, privacy, overlooking and amenity, in particular when considering the constraints of the site. The impacts have been minimized, as discussed above against the objectives of the development standard and the objections of the B2 Local Centre.

The proposed development is in public interest as the proposal complies with the objectives for both the minimum lot sizes and B2 Local centre under Canterbury-Bankstown Council area.

The proposed variation does not raise any matters of State or regional environmental planning significance.

The areas of non-compliance are considered to be reasonable and will not establish an undesirable precedent. It will not have any adverse impacts on the surrounding locality, which is characterized by residential development of comparable character. The proposal promotes the economic use and development of the land consistent with its zone and purpose.

It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 and the statement is considered to be well founded as there are sufficient environmental planning grounds to justify contravening the standard given that in this case the proposal satisfies the objectives of the zone and development standard for lot sizes under State Environmental Planning policy Housing 2021.