

THE PLANNINGHUB

by Hawes & Swan

**REQUEST UNDER CLAUSE 4.6
OF CAMPBELLTOWN LEP 2015**

**Lot Size
Fern Avenue, Bradbury**

CONTACT INFORMATION

THE PLANNINGHUB *by Hawes & Swan*
ABN 27 605 344 045
Suite 3.09, Level 3,
100 Collins Street,
Alexandria New South Wales 2015

www.theplanninghub.com.au

Author(s):



Lachlan Rodgers
Senior Town Planner

Approved by:



Jeremy Swan
Director

DOCUMENT INFORMATION

Prepared For: Capital Developments

Project Name: Raith House, Bradbury

Job Reference: 18/139

Date Approved: 15 February 2021

1.0 The Proposal

This request is written in support of an application that proposes the restoration and use of an existing heritage item and construction of a residential development at 74 Fern Avenue, Bradbury.

This Clause 4.6 statement relates to a variation proposed to Council's Minimum Lot Size for Attached Dwellings in a R2 zone as prescribed by Campbelltown Local Environmental Plan (LEP) 2015.

1.1 Clause 4.6 and Relevant Case Law

Clause 4.6 of the Campbelltown Local Environmental Plan (LEP) 2015 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP.

Clause 4.6 (3) of the LEP provides:

(3) 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:

- (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.

Further Clause 4.6(4) provides that:

(4) 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
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Secretary has been obtained.

The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court (the Court) and the NSW Court of Appeal in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827;

2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Randwick City Council V Micaul Holdings Pty Ltd* [2016] NSWLEC 7;
4. *Brigham v Canterbury-Bankstown Council* [2018] NSWLEC 1406;
5. *Initial Action v Woollahra Municipal Council* [2018] NSWLEC 118; and
6. *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511.

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]-[51] and repeated in *Initial Action* [17]-[21]. Although *Wehbe* concerned a SEPP 1 objection, the common ways to demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe* are equally applicable to cl 4.6 (*Initial Action* [16]):

1. The objectives of the development standard are achieved notwithstanding noncompliance with the standard;
2. The underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;
3. Underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
4. The development standard has been abandoned by the council; or
5. The zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).

The five ways to demonstrate compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way (*Initial Action* [22]).

The environmental planning grounds relied on in the written request under cl 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* [24]).

1.2 Relevant Development Standard

The development standard to which this objection relates is Clause 4.1C Minimum Qualifying Site Area and Lot Size for Certain Residential and Centre-based Child Care Facility Development in Residential Zones. Clause 4.1C sets out the following:

- 1) *The objectives of this clause are as follows:*
 - a) *to achieve residential densities in certain zones,*
 - b) *to achieve satisfactory environmental; and infrastructure outcomes,*
 - c) *to minimise any adverse impact of development on residential amenity,*

- d) to minimise land use conflicts.
- 2) Development consent may be granted to development for a purpose specified in the table to this clause on land in a zone listed beside the purpose, if the area of the lot is equal to or greater than the area specified in Column 3 of the table.
- 3) Development consent may be granted to the subdivision of land in a zone that is specified in the table to this clause for a purpose listed beside the zone, if the area of the lot to be created is equal to or greater than the area specified in Column 4 of the table.

Column 1	Column 2	Column 3	Column 4
Dwelling house	Zone R2 Low Density Residential	500 square metres	500 square metres
Dual occupancy	Zone R2 Low Density Residential	700 square metres	300 square metres
Semi-detached dwelling	Zone R2 Low Density Residential	700 square metres	300 square metres
Attached dwelling	Zone R2 Low Density Residential	1,000 square metres	300 square metres
Multi dwelling housing	Zone R2 Low Density Residential	1,000 square metres	300 square metres
Centre-based child care facilities	Zone R2 Low Density Residential or Zone R3 Medium Density Residential	800 square metres	N/A
Residential flat buildings	Zone R4 High Density Residential	1,200 square metres	1,200 square metres

Figure 1: Minimum Qualifying Site Area and Lot Size for Certain Residential Developments and Centre-based Child Care Facility Development in Residential Zones (Source: Campbelltown LEP 2015)

Comment:

The applicable control relates to minimum subdivision lot size of 300m² for Attached dwellings in the R2 Low Density Residential zone. The proposed development proposes Torrens title subdivision for the purposes of attached dwellings resulting in lots ranging from 147.33m² to 358.67m².

1.3 Is the Planning Control in Question a Development Standard?

'Development Standards' are defined under Section 1.4(1) of the EP&A Act as follows:

“development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

(a) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,...”

Comment:

The minimum lot size for Attached dwellings in the R2 Low Density Residential zone control under Clause 4.1C of the Campbelltown LEP 2015 is clearly a development standard.

2.0 The Contravention

The proposal results in the following variation to Council’s Minimum Lot Size for Certain Residential Development in Residential Zones as demonstrated in the table below:

Table 1: Variation to Council’s Minimum Lot Size Control		
	Control	Proposed
Minimum Lot Size for Attached Dwellings & Multi Dwelling Housing	300m ²	147.33m ² – 358.67m ²
Maximum Variation	-	152.67m ² 50.8%

As illustrated on the Architectural Drawings prepared by Integrated Design Group submitted separately, the lot sizes proposed for the attached dwellings do not meet the minimum lot size requirement of 300m². The lots proposed range from 147.3362m² to 358.67m² which equates to a maximum variation of 152.67m² (50.8%).

The subject site has a total area of 2.25ha and the development proposes a mix of housing types including attached dwellings in association with the refurbishment of an existing heritage item.

3.0 Justification of the Contravention

3.1 The Site Context

Site context is a key consideration when determining the appropriateness and necessity of a development standard. The site and its surrounds as existing are a mix of low and medium density residential land uses in the form of single and double storey dwellings and multi dwelling housing. The proposed development is consistent with the character of the area and has been designed to best respond to the existing development onsite and in the surrounding area.

3.2 Public Interest

Clause 4.6(4)(a)(ii) of Campbelltown LEP 2015 requires that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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 proposed development has been assessed against the objectives for the R2 Low Density Residential zone below. Despite the proposed variation to the minimum lot size development standard, the proposal

is considered in the public interest as it satisfies the objectives of the zone and the objectives of the development standard.

3.3 Consistency with R2 Low Density Residential Zone

The consistency of the proposal against the objectives of the R2 Low Density zone is outlined below.

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

The proposed development provides for the housing needs of the community in a low and medium density residential environment that is consistent and reflective of the existing character of the area.

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

The proposed development will provide additional housing supply that will enable other land uses that provide facilities or services to meet the day to day needs of residents.

- ***To enable development for purposes other than residential only if that development is compatible with the character of the living area and is of a domestic scale.***

The proposed development consists of residential development that is not considered inconsistent with this objective.

- ***To minimise overshadowing and ensure a desired level of solar access to all properties.***

The proposed development ensures a desired level of solar access to all properties.

- ***To facilitate diverse and sustainable means of access and movement.***

The proposed development facilitates diverse and sustainable means of access and movement through the site and provides a high level of connectivity between all proposed uses within the site.

3.4 Consistency with Objectives of the Minimum Qualifying Site Area and Lot Size for Certain Residential Development and Centre-based Child Car Facility Development in Residential Zones

The consistency of the proposal against the objectives of the minimum qualifying site area and lot size is outlined below.

- ***to achieve planned residential densities in certain zones***

The proposed development achieves an appropriate residential density for the zone and the subject site. It provides a development that contributes to and complements the existing character of the area and the heritage item onsite.

- ***to achieve satisfactory environmental and infrastructure outcomes***

The proposed development achieves satisfactory environmental and infrastructure outcomes. The proposed attached dwelling lots will not adversely impact on the natural environment or provision of infrastructure in the area.

- ***to minimise any adverse impact of development on residential amenity***

The proposed development has been sited and designed to ensure it does not adversely impact on the residential amenity of occupants or adjoining properties.

- ***to minimise land use conflicts***

The proposed layout of the development has been designed to minimise land use conflicts.

4.0 Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case (Clause 4.6(3)(a))?

Clause 4.6(3)(a) of Campbelltown LEP 2015 requires the departure from the development standard to be justified by demonstrating:

- ***Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case***

Comment

As detailed in the section above, the proposal provides residential built form that is compatible and reflective of the existing character of the area and complements the heritage item on site. The contravention of the minimum lot size control is considered reasonable in the context of the site, the layout of the proposed development and its ability to result in no adverse impacts on adjoining neighbours.

The proposed development will continue to achieve the objectives of the standard. It is therefore considered that the objectives of the development standard are met notwithstanding the breach of the minimum lot size standard.

5.0 Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard (Clause 4.6(3)(b))?

Clause 4.6(3)(b) of Campbelltown LEP 2015 requires the departure from the development standard to be justified by demonstrating:

- ***There are sufficient environmental planning grounds to justify contravening the development standard***

Comment

It is our opinion that there are sufficient environmental planning grounds to justify contravening the minimum lot size standard in this instance. These are as follows:

- The proposed development is consistent with the objectives of the zone and the objectives of the minimum qualifying site area and lot size for certain residential and centre-based childcare facility development in residential zones control.
- The proposal does not result in any adverse impacts on adjoining properties.
- The lot size variation equates to a maximum 152.67m² and does not result in undesirable bulk or scale.

It is considered the objectives of the LEP lot size standard are achieved in this instance where the proposal produces a high quality-built form that ensures a high level of amenity for residents. In addition, the proposed materials and finishes and landscaping strategy further reinforces how the development harmonizes with surrounding area.

Whilst the built form does not meet the lot size control applicable to the site, it is considered the proposed design does not unreasonably detract from the amenity of adjacent residents or the existing quality of the environment as demonstrated in Architectural Plans prepared by Integrated Design Group.

6.0 Conclusion

The proposed contravention of the 300m² lot size for attached dwellings is based on the reasons outlined in this request that are summarised as follows:

- It is considered that this proposal represents an individual circumstance in which Clause 4.6 was intended and to be available to set aside compliance with unreasonable or unnecessary development standards.
- The proposed development will not create an undesirable precedent.
- The proposed development is consistent with the objectives of Clause 4.1C and Clause 4.6 of Campbelltown LEP 2015 and therefore is in the public interest pursuant to clause 4.6(4).

In view of all of the above, it is considered that this written request has adequately addressed the matters required by Clause 4.6(3) of Campbelltown LEP 2015 and Council's support to contravene the maximum building height development standard of Clause 4.1C is therefore sought.

CONTACT US

SUITE 3.09 LEVEL 3
100 COLLINS STREET
ALEXANDRIA NSW 2015

Email INFO@THEPLANNINGHUB.COM.AU

Phone 02 9690 0279

Website THEPLANNINGHUB.COM.AU
