

HOUSING PLUS

Clause 4.6 Request for Variation

IN SUPPORT OF A DEVELOPMENT APPLICATION

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Premise

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1. INTRODUCTION

Premise Australia has been commissioned by Housing Plus to prepare an application to accompany the Statement of Environmental Effects (SEE) and Development Application (DA) for a group home at 57-59 Azalea Avenue and 3 Pitt Square, Coffs Harbour, being Lots A and B DP377015 and Lot 2 DP31821 (the 'site'). The site is located in the Coffs Harbour City Council (CHCC) Local Government Area (LGA).

Under clause 4.1(2) of the *Coffs Harbour Local Environmental Plan 2013* (CHLEP), the site is affected by two (2) applicable minimum lot sizes, being 400m² and 1200m².

As shown in **Appendix A** of the SEE, the proposed development seeks to consolidate the existing lots and re-subdivision into two (2) lots, resulting in the following:

- > Proposed Lot A – Comprises the existing dwelling of 57 Azalea Avenue and has a proposed lot size of 894.03m². The lot is subject to a minimum lot size development standard of 1200m².
- > Proposed Lot B – Comprises the proposed core and cluster buildings, as well as the existing dwelling of 59 Azalea Avenue, and has a proposed lot size of 2,993.67m².

The proposed reconfiguration of the site will result in Proposed Lot A having a shortfall of the minimum development standard by 305.97m², being a variation of 25.5%.

This application has been prepared to justify the contravention of the development standard in accordance with clause 4.6 of the CHLEP. The application has been prepared in accordance with relevant case law including *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Four2Five vs Ashfield Council* [2015] NSWLEC 1009, and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. It is to be read in conjunction with the SEE prepared by Premise and other supporting documentation as referred to in the SEE.

As per the requirements of Clause 35B of the *Environmental Planning and Assessment Regulations 2021*, Premise submits this request in written form, on the basis that there are sufficient planning grounds to support the 4.6 variation, with additional justification provided below.

2. CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

The provisions of clause 4.6 of the CHLEP are considered in **Table 1**.

Table 1 – Clause 4.6 of CHLEP

CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS			COMMENT:
(1)	The objectives of this clause are as follows—		
	(a)	to provide an appropriate degree of flexibility in applying certain development standards to particular development,	<p>The proposed 25.5% variation is considered to be reasonable within the context of the development and the surrounding area.</p> <p>Proposed Lot A is located in an area that is characterised by lots of a similar or smaller size, predominantly comprising detached single storey dwellings.</p>
	(b)	to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	<p>The proposed development is expected to result in a positive outcome for the area, with a well-designed development that will maintain the amenity of the area, while positively contributing to the social welfare of the community.</p>
(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.		<p>Clause 4.1 is not expressly excluded from the operation of this clause.</p> <p>However, variation to clause 4.1 is numerically restricted in certain zones. The proposed development is not within a restricted zone.</p>

CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS			COMMENT:	
(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	Refer to Section 2.1	✓
	(b)	there are sufficient environmental planning grounds to justify the contravention of the development standard.	Refer to Section 2.2	✓
(4)	The consent authority must keep a record of its assessment carried out under subclause (3).		Noted.	✓
(5)	(Repealed)		N/A	N/A
(6)	Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—			
	(a)	the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or	N/A	N/A
	(b)	the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.	N/A	N/A
(7)	(Repealed)		N/A	N/A
(8)	This clause does not allow development consent to be granted for development that would contravene any of the following—			
	(a)	a development standard for complying development,	The development standard to be varied does not arise from a complying development provision.	N/A

CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS			COMMENT:	
	(b)	a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,	The development standard to be varied does not arise from a commitment set out in a BASIX certificate.	N/A
	(c)	clause 5.4,	The development does not comprise a variation to CI 5.4 of the CHLEP.	N/A
	(caa)	clause 5.5.	The development does not comprise a variation to CI 5.4 of the CHLEP.	N/A

2.1 Clause 4.6(3)(a) – Unreasonable or unnecessary in the circumstances of the case

The five ways in which a Clause 4.6 request may be well-founded (hence making compliance unreasonable or unnecessary in the circumstances of the case) is set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 as follows:

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

In this instance, it is considered that the proposed subdivision achieves the objectives of the development standard, notwithstanding the non-compliance.

The development standard Clause 4.1 of the CHLEP involves only one objective which is:

(a) to ensure that lot sizes have a practical and efficient layout to meet their intended use.

The intended use of proposed Lot A is defined by the zone R3 Medium Density Residential, which specifically includes *group homes* and *residential accommodation* as development types that are permitted with consent.

The intended use of the land is further informed by the objectives of the zone R3 Medium Density Residential which include:

- > To provide for the housing needs of the community within a medium density residential environment.
- > To provide a variety of housing types within a medium density residential environment.
- > To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- > To provide for associated infrastructure that supports the changing housing needs of the population that is consistent with local character.
- > To encourage active living through the provision of healthy, walkable, green and safe built environments and streets, greener connections and walking and cycling infrastructure.

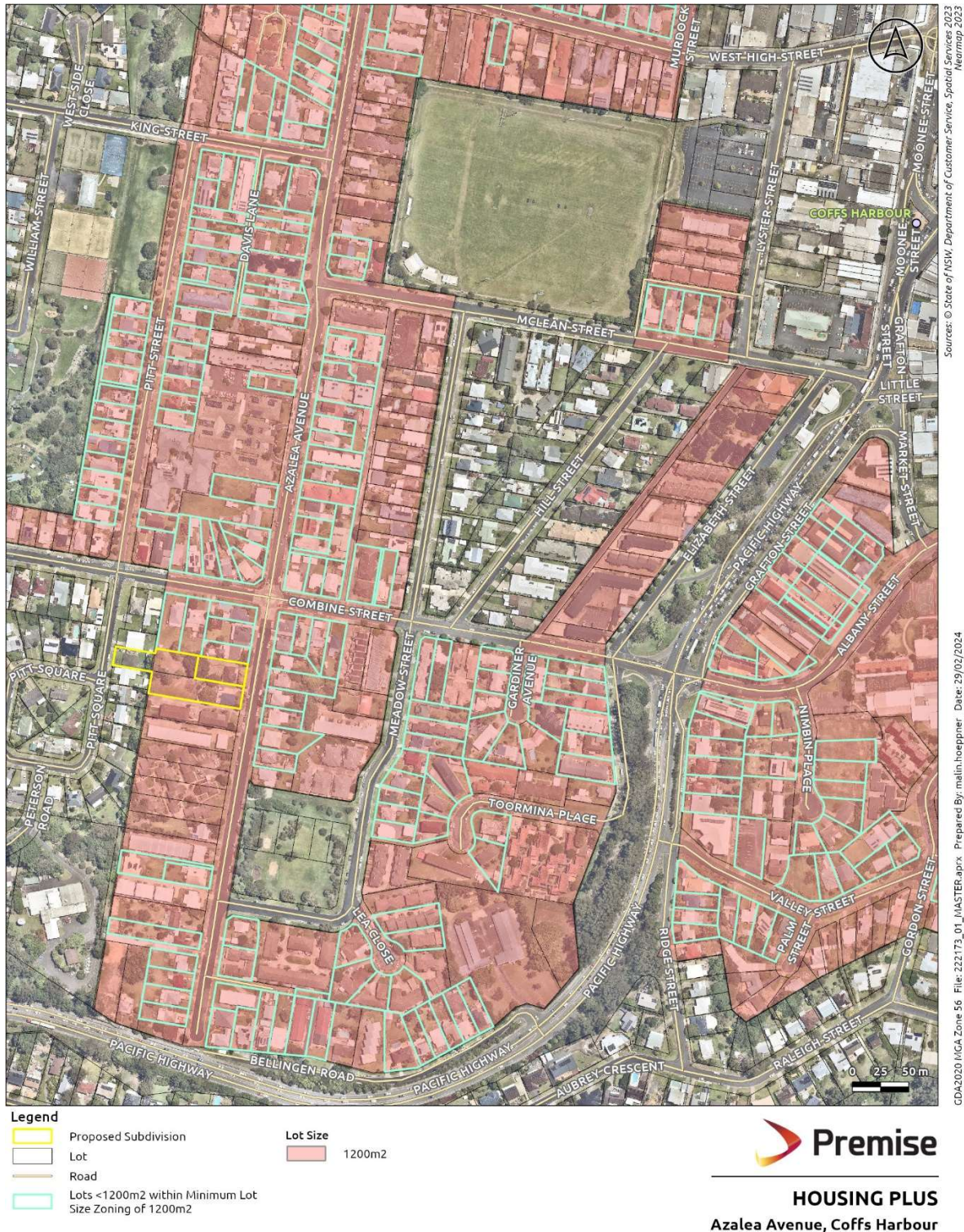
As discussed in **Section 2.2.1**, the proposed group home development is expected to significantly align with the objectives of the zone by addressing the pressing need for housing for people impacted by domestic violence. By providing this much-needed housing, the proposed development contributes to the variety of housing types within the area while also offering essential social welfare services and infrastructure for members of the Coffs Harbour community. As it is clear that a group home is an intended use within the R3 zone, it is considered that the proposed reconfiguration of the lots will facilitate the proposed development practically and efficiently, while not jeopardising the existing use of Lot A as a residential property.

As previously discussed, Lot A comprises an existing dwelling that is to remain and adjoin the proposed group home. It is considered that the ongoing use of the dwelling for residential accommodation is in keeping with the objectives of the R3 zone, as it continues to provide for housing needs in the area. The proposed reconfiguration of the lots is not anticipated to detrimentally impact the ongoing functionality of the dwelling, as the resulting Lot A will contain the existing outbuilding associated with the dwelling and will provide for ample private open space to meet the needs of the dwelling. Additionally, while Lot A is currently used as a residential lot for a detached single dwelling, the proposed lot reconfiguration is not expected to unreasonably hinder future development of the site in its proposed form, or in conjunction with surrounding lots.

Further, the proposed development is considered consistent with the intended use of the site as it has been designed to achieve consistency with the local character of the area, particularly in relation to the lot sizes. The proposed Lot A has been arranged to achieve a regular shape, with a size of 894m², consistent with other adjoining or adjacent lots, as well as lots within the surrounding area. This has been demonstrated in **Figure 1**. Due to the established character of the local cadastral pattern, it is apparent that the proposed reconfiguration will remain consistent with the objectives of the zone and therefore with the objective of CI 4.1.

After careful consideration, it is evident that compliance with the minimum lot size development standard is unreasonable and unnecessary in the circumstances of the development as the proposed development will achieve consistency with the objective of CI 4.1, despite the non-compliance with the development standard.

Figure 1 - Surrounding Lot Sizes



2.2 Clause 4.6(3)(b) – Sufficient Environmental Planning Grounds

Preston CJ explained in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (par. 23) that “sufficient environmental planning grounds” must:

- > Relate to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979* (the EP&A Act), including the objects in Section 1.3 of the EP&A Act; and
- > Justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five vs Ashfield Council* [2015] NSWLEC 1009.

In the context of the findings by Preston CJ, there are sufficient environmental planning grounds to justify contravening the development standard as, notwithstanding non-compliance, the development remains consistent with the objectives of the development standard proposed to be varied (refer to Section 2.1), the objectives of land use zone (refer to **Section 2.2.1**) and the objects of the EP&A Act (**Section 2.2.2**).

2.2.1 OBJECTIVES OF THE LAND USE ZONE

Notwithstanding the proposed non-compliance, the proposed development is consistent with the objectives of the R3 Medium Density Residential zone under the CHLEP as demonstrated in Table 3.

Table 2 – Objectives of the R3 Medium Density Residential zone

OBJECTIVES:	COMMENT:	
To provide for the housing needs of the community within a medium density residential environment.	The proposed development provides for the housing needs of the community by providing dwellings and facilities to support women and children affected by domestic violence without impacting the medium density residential environment. Domestic violence shelters are in high demand in the NSW and therefore is expected to positively contribute to the local community housing needs. The reconfiguration of Lot A will allow for the development to proceed on the remaining area of the site.	✓
To provide a variety of housing types within a medium density residential environment.	The purpose of the proposed development, as well as the building type composition, are expected to contribute to the variety of housing types within the medium density zone. Lot A will retain the existing dwelling, however the lot size will not	✓

OBJECTIVES:	COMMENT:	
	prevent further residential development on the site.	
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposed development will provide housing for women and children escaping domestic violence situations. There is a high demand for this type of housing, with the NSW Government providing significant funding for the construction of infrastructure of this nature. The proposed development will serve the social welfare needs of the Coffs Harbour community.	✓
To provide for associated infrastructure that supports the changing housing needs of the population that is consistent with local character.	The proposed development will provide social infrastructure within a growing Coffs Harbour community. The proposed development addresses changing housing needs by providing dwellings and facilities to support women impacted by domestic violence and their dependents. The proposed size of Lot A is not expected to prevent future development of the site.	✓
To encourage active living through the provision of healthy, walkable, green and safe built environments and streets, greener connections and walking and cycling infrastructure.	The site is in close proximity to the Coffs Harbour CBD, taken approximately 15 minutes walking. There are also several green space areas within the area, providing ample opportunity for active living.	✓
To ensure that development reflects design excellence in its presentation to the public realm.	The proposed development has been designed to the site and will complement the surrounding area.	✓

2.2.2 OBJECTS OF THE EP&A ACT

Notwithstanding the proposed non-compliance, the proposed development standard is consistent with the objects in Section 1.3 of the EP&A Act. In particular, it is consistent with the following objects:

- (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,*

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

The proposed contravention of the development standard with respect to proposed Lot A is a result of the reconfiguration of the lots on the site to allow for the development of a group home on the larger remaining Lot B. The group home is a proposed development by the Tier 1 accredited community housing provider Housing Plus for use as a domestic violence refuge. The contravention of the development standard will allow for this development to promote the positive social welfare of the community of Coffs Harbour.

The proposed contravention of the development standard, with respect to proposed Lot A, promotes the orderly and economic use and development of the land. The proposed size of Lot A allows for the proposed development of the group home on the remaining larger Lot B, while maintaining the ongoing functionality of Lot A as a residential dwelling. Further, proposed Lot A has sufficient area to accommodate the potential future development with appropriate rural setbacks.

The proposed development aims to achieve good design outcomes and maintain the amenity of the residential area. The developer Housing Plus have worked to ensure their projects are of high quality, using durable materials that complement the surrounding local area.

With consideration of the objects of the EP&A Act, it is evident that the proposed development is consistent and will positively contribute to the surrounding area and the ongoing welfare of the Coffs Harbour community.

3. CONCLUSION

The proposed request to vary the development standard relates to the size of Lot A, and proposes to vary *Cl 4.1 Minimum subdivision lot size*.

As demonstrated in this request, compliance with the development standard is unreasonable and unnecessary in the circumstances of the development, as the proposed development remains consistent with the objective of Cl 4.1, despite the contravention from the standard. Additionally, it has been found there are sufficient environmental planning grounds to justify the contravention of the development standard as the proposed development remains consistent with the objectives of the R3 Medium Density Residential zone, and the objects of the EP&A Act. With consideration of the above report, it is requested that the variation to the development standard be supported for approval.