Central Coast
Local Planning Panel

SUPPLEMENTARY ASSESSMENT REPORT

TO: Central Coast Local Planning Panel

FROM: Andrew Roach Unit Manager Development Assessment

SUBJECT: Additional Information (Development Application No. DA58092/2020)

Two (2) lot subdivision/ demolition of existing swimming pool (73 Caroline St East Gosford)

DATE: 20 August 2020

I refer to the abovementioned Development Application which is to be considered by the Central Coast Local Planning Panel at its meeting of 20 August 2020. Following site inspection, the Panel members raised a number of matters relation to the contents of the report.

This addendum provides an update on those matters.

Typographical Error Within the Report

It has been noted that there are a number of typographical errors in the report, referencing an incorrect calculation. For example, the report states:

> *'The development application provides for lot sizes of 453 m^2 for each lot. The variation to the minimum lot size is <u>47m^2</u> (which equates to a variation of 17.6 %).'*

This is a typographical error, the reference to 47m^2 should be 97m^2. This error has been made a number of times throughout the report. All references to a 47m^2 non-compliance should be read as 97m^2, including on page 90 of the agenda (under the heading *'Gosford Local Environmental Plan 2014 – Clause 4.1: Minimum Subdivision Lot Size'*) and on page 92 of the agenda (under the heading *'Clause 4.6- Exceptions to Development Standards'*)

The Planning Assessment undertaken for this development application has been based on there being a variation to the development standard of 97m^2 and not the 47 m^2 that had been referenced to in the Planning Assessment report.

Assessment of Clause 4.6 Submission

A further matter was raised in relation to addressing further the issues associated with Clause 4.6 of the *Gosford Local Environmental Plan 2014* (GLEP 2014) and in particular the approach to determining a request for a variation under Clause 4.6 as identified in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

In that matter the Court determined that:

> *'the first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.'*

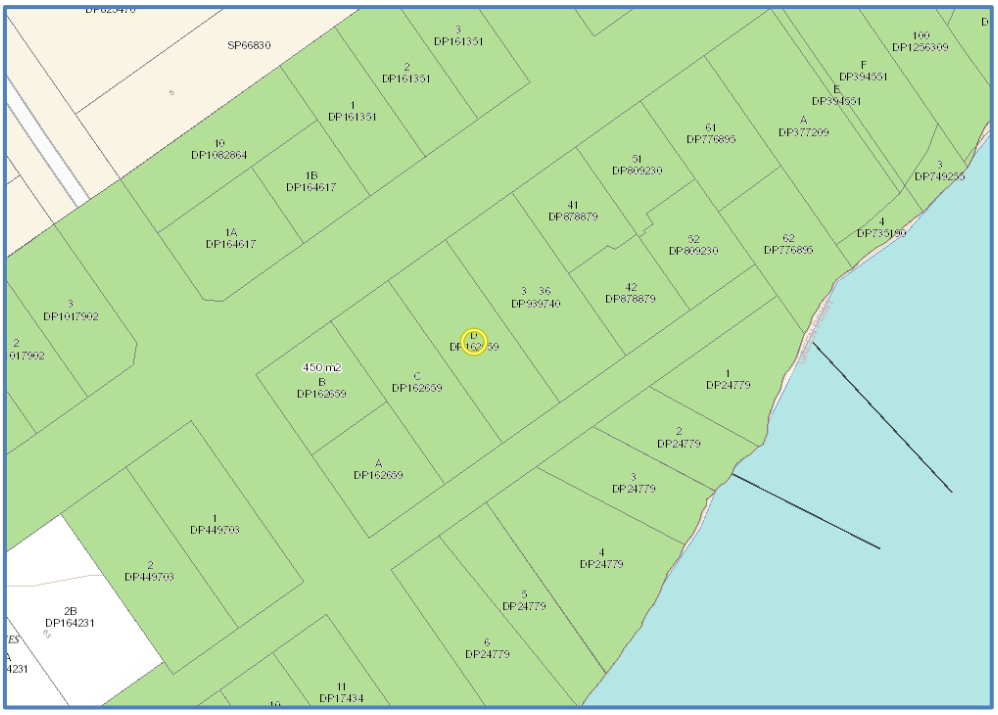
The Court identified that there were five (5) ways to establish that compliance with the development standard is unreasonable or unnecessary. The first and most commonly invoked way and the one relevant to this application is to establish that *compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard:* Wehbe v Pittwater Council *at [42] and [43*. The Court determined that not all five (5) ways are needed to be established by the applicant.

In this instance the applicant has reasonably established that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The applicant has provided the following in support of the application:

> *'In the case of in Wehbe v Pittwater Council [2007] NSWLEC 827, Justice Preston said that the most commonly invoked way to establish that compliance with a development standard is unreasonable or unnecessary is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The proposal is consistent with the objectives of Clause 4.1 (see the five-part test below).*
>
> *The reasons why strict compliance with the development standard is unreasonable and unnecessary in this particular case for the following reasons:*
>
> *a) The proposed development is in keeping with the character, scale and density of the surrounding developments within the immediate vicinity.*
> *b) The proposal is consistent with the objective of Clause 4.1 of GLEP 2014 (see responses in the "five part test" below).*
> *c) The proposal is consistent with the objectives of the R2 Low Density Residential Zone contained in GLEP 2014.*

d) *The proposal complies with the minimum lot size designated in the exhibited draft Central Coast Local Environmental Plan – which shows a minimum lot size of 450m² for the subject property. See the map extract below.*
e) *The proposal is consistent with the established pattern of subdivision in the street.*
f) *The proposed new allotment will have sufficient land area and topography to accommodate a future dwelling.*
g) *The proposal generally complies with the requirements of Gosford Development Control Plan 2013.*
h) *The proposal will address the high demand for housing in this area.*
i) *The proposal will ultimately contribute to the variety of housing choice in the area.*
j) *The proposal will make a positive contribution to the streetscape.*
k) *The lack of adverse amenity impacts on adjoining properties.*



Source: Draft Central Coast Local Environmental Plan Maps – Lot Size layer

The Court further stated that:

> *' … as to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*

> *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

In this instance the applicant has demonstrated that the environmental planning grounds are sufficient to justify contravening the development standard.

The applicant has provided the following:

> *'There are sufficient environmental grounds to justify the contravention of this development standard in this particular case. These include:*
>
> - *The shortfall of 97m² in each allotment does not result in an undevelopable site. There are examples of allotments of similar size accommodating modern contemporary dwelling house designs.*
> - *The shortfall in site area does not result in an unacceptable impact on any adjoining property.*
> - *The shortfall will not weaken the objective of this development standard.'*

The Court lastly states the following;

> *'The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).*

> *The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*

In this instance the applicant has demonstrated that the public interest has satisfactorily been met to justify contravening the development standard because it is consistent with the objectives of the development standard and the objectives of the zone.

The applicant has provided the following:

> *Given that the proposed development is consistent with the relevant objectives of Clause 4.1 and the R2 Low Density Residential Zone, approval of the development is in the public interest.*