

1 December 2021

Our Ref: HEM:EYC001/4001

The Honourable Paul Stein  
Chair  
Strathfield Local Planning Panel  
Strathfield Council  
65 Homebush Road  
STRATHFIELD NSW 2135

Dear Sir

**Development Application No. 2021/235**

**Property: 33 Mackenzie Street, Homebush**

**Clause 4.6 variation request in relation to the minimum lot size development standard in clause 4.1A of *Strathfield Local Environmental Plan 2012***

**Introduction¶**

We refer to the above development application that is to be considered by the Panel at its meeting on 2 December 2021.

We act for the applicant and have been instructed to respond to the Council's assessment of the applicant's clause 4.6 variation request seeking a variation of the minimum lot size for multi-dwelling housing in clause 4.1A of *Strathfield Local Environmental Plan 2012*, prepared by Caladines Town Planning dated 27 October 2021 (**Variation Request**).

We have reviewed the Council Assessment Report (**Council Report**). We note that the Council Report does not attach a copy of the Variation Request. We **enclose** a copy of the Variation Request.

We have some concerns in relation to the Council's analysis (Council Report, pages 169- 183) of the Variation Request and request that the Panel members review and consider the Variation Request in full.

**The Applicant's concerns with the Council's analysis and assessment of the Variation Request**

We make the following non exhaustive comments in relation to the Council's analysis of the Variation Request.

1. *Kasif v Georges River Council [2020] NSWLEC 1068 "bares (sic) little or no relevance to the subject variation request"* (Council Report, pages 170, 171 and 180).

This is wrong.

*Kasif* is precisely on point and is a directly comparable example, with similar but not identical circumstances. It provides guidance to the Panel in making its decision. It is an example where the Land and Environment Court upheld a clause 4.6 variation request concerning non-compliance with an identical provision in the former *Kogarah Local Environmental Plan 2012*. The subject site considered by the Court could not be amalgamated with any adjoining properties to meet the 1000 m<sup>2</sup> minimum lot size for residential flat buildings. The site would be an isolated site unless the non-compliance with the minimum lot size was upheld. The Court upheld the clause 4.6 variation request. See Variation Request, paragraphs 3.6-3.7, 5.11-5.18 and 5.46.

Further, the fact that there is no floor space ratio control applying to 33 Mackenzie Street and there was with the site in *Kasif* does not mean that that *Kasif* is irrelevant. As the Variation Request points out at paragraph 5.14, the proposed development complies with most the building

envelope controls that apply to the site under *Strathfield Consolidated Development Control Plan 2005 (DCP 2005)*.

2. *Contrary Preston CJ in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (Council Report, page 170): The point made in the Variation Request was noting a comment made in the Council's request for information letter dated 8 October 2021 which focused on the fact that a dual occupancy could be constructed on the site. This was the primary basis provided by the Council for rejecting the previous version of the clause 4.6 variation request.

This has carried over to the Council Report. In our view, the opinion in the Council Report that a two storey dual occupancy or a high-quality dwelling house could be erected on the site has infected the analysis and consideration by the Council of the Variation Request. It is more than just a factual observation by the Council officer.

On the Council's analysis and assessment, a written request under clause 4.6 seeking to justify the minimum lot size *could never succeed*. This is precisely what was considered by the Court in *Initial Action* at [87]-[88]. This is so notwithstanding that the Council Report does not state that the non-complying development should have a neutral or beneficial effect relative to a compliant development. The focus in the Council Report seems to be on the benefits of development compliant with the minimum lot size. See further below in relation to consideration of a dual occupancy development on the site.

3. *Why compliance with the development standard is unreasonable or unnecessary*: The Council Report repeatedly rejects the analysis provided in the Variation Request in relation to why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, by simply stating that an argument "*is unsubstantiated as discussed elsewhere in this report*" (see Council Report, pages 171, 172, 173, 174 and 183) but often does not explain why, or provides unsubstantiated grounds for rejecting the statements in the Variation Request. See comments below in relation to a dual occupancy development.
4. *Wehbe 1*: We refer the Panel to the arguments in paragraphs 5.11-5.30 of the Variation Request and request that the Panel consider them in their totality (Council Report, pages 170-174). Further in relation to compliance with SCDCP 2005,<sup>1</sup> we refer the Panel to the report from Caladine Town Planning provided to the Council on 29 November 2021. As to the noncompliance with the 30 metre street frontage requirement<sup>2</sup>, it is noted that 31 Mackenzie and 40 Bates Street both have street frontages of approximately 15.24 metres. See Variation Request, paragraph 5.4.
5. *Wehbe 3*: We refer the Panel to the arguments in paragraphs 5.28-5.41 of the Variation Request and request that the Panel consider them in their totality (Council Report, pages 174-176).
6. *Wehbe 4*: There is no requirement to provide an example of a townhouse development in the Strathfield LGA suggested in the Council report, page 177. The applicant's reasoning is at paragraphs 5.42-5.47 of the Variation Request.
7. *Sufficient environmental planning grounds*: The Council Report repeatedly states that the environmental planning grounds are insufficient but does not provide any real and adequate explanation as to why (see pages 177, 178, 179 and 183). The rejection of the ground that the site cannot be consolidated with other R3 zoned land and therefore would be an isolated site is not adequately explained in the Council Report. In our opinion, this ground alone would be sufficient for the Panel to rely on for the purposes of clause 4.6(3)(a)(b). It is noted that the Court held that this was a sufficient environmental planning ground in *Kasif*: at [119].

It is also noted that the Court has repeatedly held that the same grounds upon which compliance with the development standard is unreasonable or unnecessary in the circumstances of the case may also provide sufficient environmental planning grounds justifying the non-compliance.

We refer the Panel to the sufficient environmental planning grounds set out in full in paragraph 5.48 of the Variation Report.

---

<sup>1</sup> See Council Report, pages 155, 171, 173.

<sup>2</sup> See Council Report, page 184.

8. Orderly and economic development of land: Peric v Randwick Sydney Council [2018] NSWLEC 1509 (Council Report, page 179): The clear rationale that the contravention of the minimum lot size facilitates the orderly and economic use and development of the site is set out and discussed at length in paragraphs 1.8, 5.4 -5.5, 5.19, 5.28, 5.39, 5.43, 5.46, 5.48 6.19, 9.2 and 9.3 of the Variation Request.
9. Consistency with minimum lot size objectives: See Variation Request, paragraphs 5.11-5.30 and 6.4.
10. Consistency with R3 zone objectives: See Variation Request, paragraphs 6.5 -6.17.
11. Development of the site for a dual occupancy development (Council Report, pages 172, 173, 174, 178, 179 and 183): Dual occupancy development is not a form of medium density development, whether or not dual occupancies are permitted in the R2 zone (except for Greenacre which is acknowledged in the Council Report). A dual occupancy development would increase the density of the site by one dwelling (see Council Report, page 172). The proposed development would increase the density of the site by an additional three dwellings.
12. Retention of the existing dwelling house or development of the site for a high-quality dwelling house (Council Report, pages 172 and 179): A dwelling house is not a form of medium density development. The retention of the existing dwelling house, or the redevelopment of the site for a dwelling house, although permissible with consent in the R3 zone, would be an underdevelopment of the site. We note that in *Kasif*, the Court found that if the site in that case remained developed with only a single storey cottage it would not meet the objectives of the medium density zoning of the site: at [120].
13. Sterilisation of the site: The Council Report concluded as unsubstantiated the Variation Request's argument that maintenance of the minimum lot size would result in sterilisation of the site (Council Report, page 183). The Council Report has taken the argument out of context. The statement in the Variation Request was to avoid sterilisation in order to meet the medium density objectives- see the Variation Request, paragraphs 5.46 and 6.19.
14. Reference to "anecdotal evidence" (Council Report, page 178): When development consent was granted for the adjoining site at 31-33 Mackenzie Street, it was intended that the balance of Mackenzie Street would be developed as a multi-unit development in the future. The applicant and the applicant's planner have reviewed and considered the Council planning reports in relation to both 31-33 Mackenzie Street and 40 Bates Street. The applicant obtained a copy of these reports pursuant to GIPA applications made to the Council.

The writer will be addressing the Panel at the meeting on 2 December 2021 and is happy to take questions from the Panel in relation to the Variation Request if required.

Yours faithfully



**Helen Macfarlane**  
**Consultant**

Direct Line: +61 2 8915 1004

Direct Fax: +61 2 8916 2000

Email: [helen.macfarlane@addisons.com](mailto:helen.macfarlane@addisons.com)

Encl



**Clause 4.6 Exceptions to Development Standards  
Strathfield Local Environmental Plan 2012  
Clause 4.1A Minimum Lot Sizes - Multi-Dwelling Housing  
33 Mackenzie Street Homebush**

**1. Introduction**

- 1.1 This written request is made pursuant to Clause 4.6 “*Exceptions to Development Standards*” under the provisions of Strathfield Local Environmental Plan 2012 (**SLEP 2012**). The written request seeks to vary the 1000m<sup>2</sup> minimum lot size control in clause 4.1A of the SLEP 2012 for Multi-Dwelling Housing on the site at 33 Mackenzie Street, Homebush.
- 1.2 The site comprises a lot size of 696.8m<sup>2</sup>, whereby as mentioned previously, the development standard for the development of land for the purpose of Multi-Dwelling Housing is 1000m<sup>2</sup>, which is 303.2m<sup>2</sup> or 30.3% below the standard.
- 1.3 This written request seeks to demonstrate that compliance with the minimum lot size standard for multi dwelling housing is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3) (a) of SLEP 2012) and that there are sufficient environmental planning grounds to justify contravening this development standard (clause 4.6(3)(b) of SLEP 2012).
- 1.4 Clause 4.6(4)(a)(i) of the SLEP 2012 requires the consent authority to be satisfied that the written request adequately addresses the following:
- 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 minimum lot size for multi dwelling housing.
- 1.5 The consent authority then must be satisfied pursuant to clause 4.6(4)(a)(ii) that:
- the proposed development will be in the public interest because it is consistent with the objectives of the minimum lot size for multi dwelling housing and the objectives for development within the R3 medium density residential zone in which the development is proposed to be carried out.
- 1.6 Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case because:
- (a) the objectives of the minimum lot size for multi dwelling housing are achieved, notwithstanding the numerical non-compliance (Wehbe 1);<sup>1</sup>
  - (b) the underlying object or purpose of the minimum lot size for multi dwelling housing would be defeated or thwarted if compliance was required and therefore compliance is unnecessary (Wehbe 3); and

<sup>1</sup> *Wehbe v Pittwater Council* (2007) 156 LGERA 446.

- (c) the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable (Wehbe 4).
- 1.7 These reasons that support by compliance with the minimum lot size development standard is unreasonable and unnecessary in the circumstances of the case are also the sufficient environmental planning grounds to justify contravening the minimum lot size for multi dwelling housing.
- 1.8 Varying the minimum lot size also achieves the objectives in section 1.3(c) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to promote the orderly and economic use and development of land.
- 1.9 The proposed townhouse development will be in the public interest because it is consistent with the objectives of the minimum lot size for multi dwelling housing, as discussed above, and it is consistent with the objectives for development within the R3 Medium Density Residential zone. It provides for the housing needs of the community and provides a variety of housing types within a medium density residential environment comprising a well-designed small townhouse development of four dwellings, one of which is adaptable and two of which provide for a fourth bedroom and bathroom at ground level, thus ensuring that housing is accessible to older people and people with mobility disabilities; the proposed development responds to the width of the site and the site area, complies with the height control in clause 4.3 of SLEP 2012 and the building envelope controls in Part C of Strathfield Consolidated Development Control Plan 2005 (**SCDCP 2005**).<sup>2</sup>
- 1.10 As the Strathfield Local Planning Panel will be the consent authority for the development application, concurrence can be assumed in accordance with the Planning Secretary Assumed concurrence notice.

## **2. Definition of Development Standards**

- 2.1 This variation request seeks to justify a contravention of the 1000m<sup>2</sup> minimum lot size control in clause 4.1A of SLEP 2012.
- 2.2 The definition of development standard set out under Section 1.4 of the EP&A Act 1979 states:

*"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 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,*

---

<sup>2</sup> Except for the minimum lot size for multi dwelling housing, 1000 m<sup>2</sup> and the 30 m width requirement in section 2.2 of SCDCP 2005.

- (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.

### Comment

- 2.3 Clause 4.1A “Minimum Lot Size – Multi Dwelling Housing” is the relevant development standard within SLEP 2012, being a statutory planning instrument and as such the minimum lot size can be varied pursuant to Clause 4.6 and is not excluded by Clause 4.6(8) of SLEP 2012.

### 3. Land and Environment Court Judgments

- 3.1 The following Land and Environment Court judgments are a relevant consideration in the assessment of this submission:

1. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118
2. *Wehbe v Pittwater Council* (2007) 156 LGERA 446
3. *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130
4. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC
5. *Kasif v Georges River Council* [2020] NSWLEC 1068.

### Comment

- 3.2 In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (**Initial Action**), Preston CJ held that that the consent authority must form two positive opinions of satisfaction, being:

- (a) That the applicant’s written request has adequately addressed both matters required to be addressed by clause 4.6(3)(a) and (b). The consent authority does not have to directly form the opinion of satisfaction regarding the matters in clause 4.6 (3)(a) and (b), but only indirectly form the opinion of satisfaction that the written request **adequately addresses** the matters required to be demonstrated by those clauses (see paragraph [25] of *Initial Action*). Clause 4.6 (3)(b) does not require any better “environmental planning outcome” to be proven, but rather that there be “sufficient environmental planning grounds” to justify contravening the development standard (see paragraph [41] of *Initial Action*);
- (b) That in accordance with clause 4.6(3)(b), 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 (see paragraph [26] of *Initial Action*); and

For a clause 4.6 variation request to be adequate, the consent authority is still required to be directly satisfied about the matters described in clause 4.6(4)(a)(ii) (see paragraph [26] of *Initial Action*).

- 3.3 In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 Preston CJ identified five (5) different ways in which it could be demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. These five (5) ways are set out below:

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 thwarted by 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 would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*
- 3.4 In *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 the Court of Appeal held (at [51]) that in order for a consent authority to be satisfied that an applicant's written request has "*adequately addressed*" the matters required to be demonstrated by clause 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated and it is insufficient for the request merely to seek to demonstrate the matters in clause 4.6(3) (which is the process). The request must in fact demonstrate the matters in clause 4.6(3) (which is the outcome required by cl 4.6(3) and (4)(a)(i)).
- 3.5 In *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386 it was held that the extent of the numerical variation does not form part of the required test under clause 4.6. In that particular case there was a 55% exceedance of height and 20% exceedance of FSR.
- 3.6 In *Kasif v Georges River Council* [2020] NSWLEC 1068, a variation to the minimum lot standard of 509.5m<sup>2</sup>, or 50.96% (to the similar 1000 square metre minimum lot requirement) was granted by the Land and Environment Court as it was found that compliance with the standard is unreasonable or unnecessary due to the following circumstances:
1. the lot size of the subject site could not be increased to meet the minimum lot size requirement due to the nature of adjoining residential flat buildings on both sides such that amalgamation was not possible, and this was recognised by the Council when approving the redevelopment of the adjoining site-at [119]. See also [77] and [118];
  2. it was agreed by the Council that the site can and should be redeveloped, notwithstanding its land size and taking into consideration it complied with both the height and FSR controls -at [119], [120];
  3. a driveway easement was already in place to facilitate future development of the site when the adjoining site was approved for redevelopment by the Council, being an acknowledgement by the Council that development on the subject site would require access via the driveway to a future basement on the subject site- at [119]. See also [77]- [78] and [118];
  4. for the site to remain developed with a single storey cottage, the objectives of the medium density zoning would not be met -at [120]. See also [80] and [118]; and
  5. the proposed development demonstrates that the site can be developed without any unreasonable adverse impacts on neighbouring properties or future occupants, notwithstanding its size -at [121]. See also [79] and [118].
- 3.7 The similarities between the proposed development, the objectives of the minimum lot size in the zone objectives to the subject development and the development considered by the Court in the *Kasif* case are considered in paragraphs 5.11-5.12 and 5.16 to 5.18 below.

#### 4. Location of Site and Neighbouring Properties

- 4.1 The subject site is a midblock site and is not subject to a FSR control but is compliant with the SLEP 2012 height control of 9.5 metres. The bulk and scale of the proposed building is generally compliant with the building envelope controls set out under SCDP 2005. The proposed townhouse development will be compatible in scale and density with existing townhouse developments to the north (31 Mackenzie Street) and west (40 Bates Street) of the site. See **Figure 1**.
- 4.2 It is also noted that the properties to the north and south zoned R2 Low Density Residential also have a height control of 9.5 m under SLEP 2012 and a minimum lot size of 560 m<sup>2</sup>.

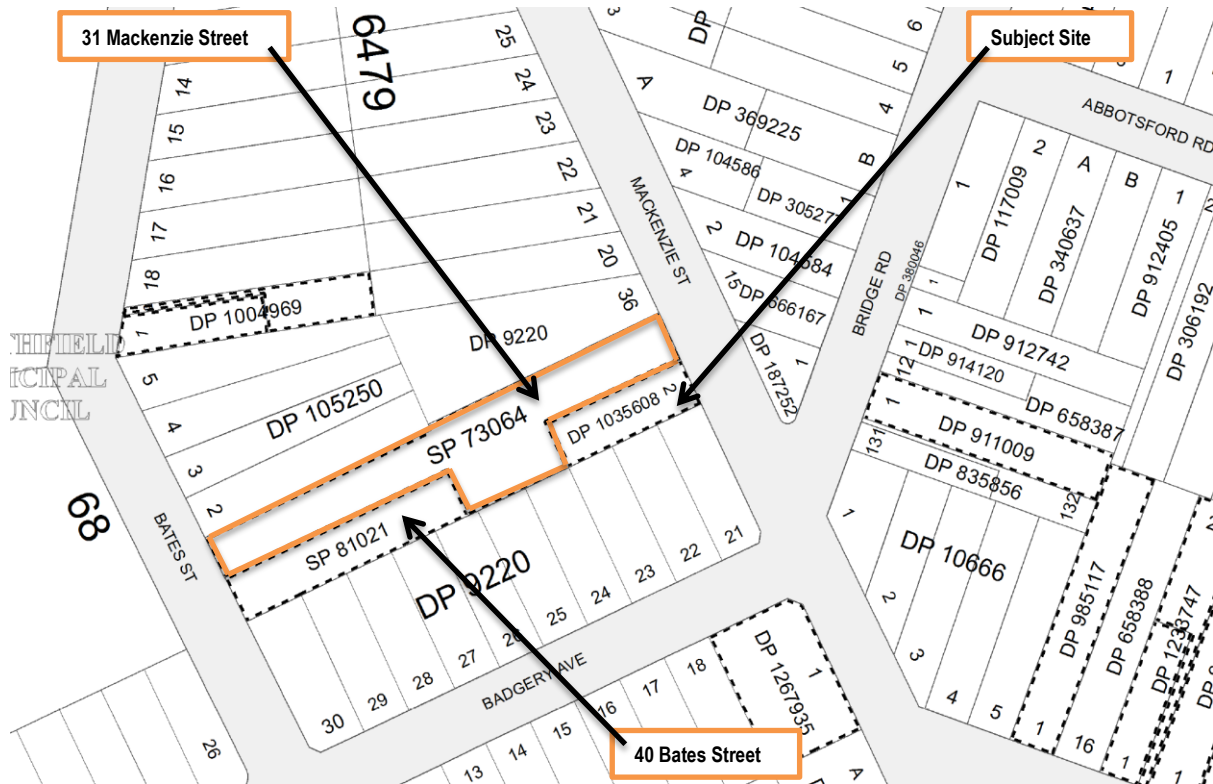


Figure 1  
Source: NSW Land Registry Services

#### 5. Clause 4.6 Exceptions to Development Standards of SLEP 2012

- 5.1 Clause 4.6 of the SLEP 2012 is extracted below:

(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,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances. /

(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:

(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.

(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 Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) .....

(7) .....

(8) .....

#### **Clause 4.6 Exceptions to Development Standards - Strathfield LEP 2012**

5.2 Clause 4.6 Exceptions to Development Standards of SLEP 2012 allows a consent authority to grant consent for development even though the development standard contravenes a development standard imposed by the LEP. The clause aims to provide a degree of flexibility in applying certain development standards to achieve better planning outcomes for development. In this particular case the proposal seeks to vary the minimum lot size standard as set out under Clause 4.1A of SLEP 2012 that applies to multi dwelling housing.

#### **Sites Zoning, Minimum Lot Size and Departure from Standard**

5.3 The subject site is zoned R3 Medium Density Residential under SLEP 2012. The site is located within a low to medium density residential neighbourhood where there is a variety of residential housing types and scales.

5.4 The subject site and sites immediately to the north (31 Mackenzie Street) and west (40 Bates Street) are all zoned R3 Medium Density Residential, ranging in scale but similar to that of the proposed townhouse development. The site immediately to the north, 31 Mackenzie Street contains a large townhouse development comprising 16 townhouses on a site with a site area of 2813 m<sup>2</sup> and a primary frontage of 15.24 m on Mackenzie Street and a secondary frontage of 14.02 m on Bates Street. The site immediately to the west, 40 Bates Street comprises a townhouse development of 5 dwellings on a site with an area of 1185 m<sup>2</sup>. It has been developed on a 15.24 m street frontage despite the new provision of Clause 18 (3) of DCP 3 (the relevant planning control at the time of assessment) requiring a

30 m frontage for the erection of multi-unit housing. Council accepted the site was an isolated lot and there was no opportunity to amalgamate with adjoining site and multi-unit housing was consistent with the objectives of the zone.

- 5.5 Further, land immediately to the south is zoned R2 Low Density Residential where townhouse development is prohibited. The subject site is an isolated site and is the last remaining parcel of land in this pocket of R3 zone land to be developed for townhouses. The issue of isolation was anticipated and given regard during the development approval process of these north and west neighbouring townhouse sites. Evident in the provision of a storm water easement servicing the site.
- 5.6 As discussed earlier, the lot size of the subject site is 696.8m<sup>2</sup>, which is deficient by 303.2m<sup>2</sup> from the 1000m<sup>2</sup> minimum required for townhouse development in the R3 Medium Density Residential zone, representing a variation of 30.3% below the development standard.

**Development Standards Within SLEP 2012 To Be Varied**

- 5.7 The objectives of the development standard to which this objection relates can be found at Clause 4.1A Minimum Lot Size Dual Occupancies, Multi-Dwelling Housing and Residential Flat Buildings. See clause 4.1A below:

**4.1A Minimum Lot Sizes for Dual Occupancies, Multi Dwelling Housing and Residential Flat Buildings**

1. *The objective of this clause is to achieve planned residential density in certain zones.*
2. *Development consent may be granted to development on a lot in a zone shown in Column 2 of the Table to this clause for a purpose shown in Column 1 of the Table opposite that zone, only if the area of the lot is equal to or greater than the area specified for that purpose and shown opposite in Column 3 of the Table.*

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<i>Multi Dwelling Housing</i>	<i>Zone R3 Medium Density Residential Zone</i>	<i>1000m<sup>2</sup></i>

- 5.8 The development site comprises a lot size of 696.8m<sup>2</sup>, whereby as mentioned previously, the prescribed standard for the development of site for the purpose of Multi-Dwelling Housing is 1000m<sup>2</sup>. The subject site is 303.2m<sup>2</sup> or 30.3% below the 1000m<sup>2</sup> standard.
- 5.9 There is no floor space ratio development standard in SLEP 2012 that applies to the site. This is not an anomaly. Neither the adjoining R3 zoned and R2 zoned sites are subject to an FSR control under SLEP 2012. The minimum lot size standard is the anomaly (NOT FSR) as this particular R3 zone precinct has previously and continues to be subject to a minimum lot size of 560m<sup>2</sup> - reference made to SLEP 2012 maps and previous (now superseded) control referred to as the Strathfield Planning Scheme Ordinance 1969 - Clause 41. The multi-unit minimum lot size written instrument is only consistent with other R3 zones that show a minimum lot size requirement of 1000 m<sup>2</sup> on maps, whereas this particular R3 zone precinct has previously and continues to be subject to a minimum lot requirement of 560 m<sup>2</sup>. Further, there is no floor space ratio control in SCDCP 2005 that applies to the site and the two-storey density sub-zone constraint in Appendix 1 of SCDCP 2005 does not identify the site as subject to that constraint. Accordingly, the density of the development needs to be considered in the context of its zoning, and the building envelope controls in SCDCP 2005.

**Comment**

- 5.10 The objective contained within the SLEP 2012 relating to minimum lot size is to:

(1) *Achieve planned residential density in certain zones;*

**Clause 4.6(3)(a) - Compliance is Unreasonable or Unnecessary in the Circumstances of the Case**

**Wehbe 1 - The objectives of the standard are achieved notwithstanding non-compliance with the minimum lot size development standard for multi dwelling housing**

- 5.11 The objective of the minimum lot size is the same as in *Kasif*, namely, to achieve the planned residential density in certain zones.
- 5.12 The Court accepted the applicant's argument in *Kasif* that the zoning and floor space ratio control are the best indicators of what the planned residential density for the site is: [118] and [76].
- 5.13 The proposed development is consistent with the objectives of the R3 zone (see paragraphs 6.5 to 6.18). There is no floor space ratio development standard under SLEP 2012 that applies to the site. This is not an anomaly. The minimum lot size is considered the anomaly in this instance as SLEP 2012 maps show 560m<sup>2</sup> in this R3 zone precinct that consistent with previous minimum lot controls referred to previously in the Strathfield Planning Scheme Ordinance 1969 - Clause 41; whilst other R3 zones are shown on the SLEP 2012 maps with 1000m<sup>2</sup> minimum lot size requirement. Neither the subject site nor the adjoining R3 zoned and R2 zoned sites are subject to an FSR control under SLEP 2012.
- 5.14 However, the development complies with all of the building envelope controls that apply to the site under SC DCP 2005. This is discussed further in paragraph 5.23 - 5.29 below.
- 5.15 The development also has well-articulated facades with a range of materials where its scale and form are congruous with a medium density scale and with the character of its setting. The development is an appropriate response to the site and its context and will be in unity with the planned residential density envisaged for the site despite the shortfall in site area.
- 5.16 Further, as in *Kasif*, where the site in that case was surrounded by not only residential flat buildings but dwelling houses and townhouses<sup>3</sup>, the subject site adjoins multi dwelling housing to the north and the west at 31 Mackenzie Street and 40 Bates Street, respectively, and low density residential development to the south. (It is noted that the low density residential provides the same height requirement as the subject site, namely 9.5 m).
- 5.17 In considering the zoning in this context, it is not only the zone objectives that is of relevance (consistency with the R3 zone objectives is discussed in paragraphs 6.5 to 6.18 below, but also the development permissible within the R3 zone.
- 5.18 Critically, like the *Kasif* case, one of the key points to consider is that the other forms of residential development permissible on the site that do not require a minimum lot size of 1000 m<sup>2</sup> are not forms of medium density residential, they are forms of low-density housing that are permissible in the R2 Low Density Zone e.g., attached dwellings, dwelling houses, secondary dwellings, semi-detached dwellings.
- 5.19 The Council has suggested that a dual occupancy development which requires a minimum lot size of 560 m<sup>2</sup> would provide an appropriate variety of housing to satisfy the objectives of the R3 zone. However, such a development would not involve the orderly and economic development of land in accordance with section 1.3(c) of the EP&A Act and would not be consistent with the zone objectives having regard to the area of the site, which is 696.8 m<sup>2</sup> and having regard to the other townhouse development approved by the council at 31 Mackenzie Street and 40 Bates Street, Homebush.

---

<sup>3</sup> See [31]-[33] of the judgment.

- 5.20 It is noted that Part B of SCDCP 2005 Dual Occupancy Housing section 2.2 *Site Requirements* relevantly provides that:
- Generally, dual occupancy developments should take place on allotments that are appropriate for dwelling houses.*
- 5.21 Having regard to its zoning and its size, the site is not appropriate for a dwelling house.
- 5.22 Also it is noted that Part B of SCDCP 2005 Dual Occupancy Housing section 2.2 *Side and Rear Boundary Setbacks* provides that a dual occupancy only requires:
- 2. A 900mm minimum setback from side and rear boundaries for walls of less than 3.0 metres in height.*
- 3. A 1.5 metre minimum setback from side and rear boundaries for walls greater than 3 metres in height.*
- 5.23 The setbacks of the proposed development are compliant with the multi-unit dwelling envelope in SCDCP 2005 and range between 4-4.5 metres to the northern boundary and 2-3 metres to the southern boundary and 3 metres to the western boundary.
- 5.24 Other controls in SCDCP 2005 that indicate that a dual occupancy development is appropriate for a site much smaller than the subject site including Section 2.3, Density, Bulk and Scale:
- (a) 1. The maximum floor space ratio<sup>4</sup> for dual occupancy developments (attached and detached) is 0.5:1<sup>5</sup>; and
- (b) 3. A detached dual occupancy must have a maximum floor space of 100 m<sup>2</sup>.
- 5.25 These controls limit the size of any new dwellings on the site and the ability to achieve consistency with the objectives of the R3 zone to provide for the housing needs of the community and to provide a variety of housing types. In contrast, there is no FSR control that applies to multi dwelling housing on the site either under SLEP 2012, or SCDCP 2005, and the unit size control in Part C, section 2.3 of SCDCP 2005 provides minimum unit sizes, not maximum unit sizes.
- 5.26 The building envelope provides an overall parameter for the design of the development as set by the SLEP height control. The proposal complies in its amended form with the SLEP height restriction of 9.5 metres and the SCDCP 2005 envelope controls. Although the site does not satisfy the 30 m width requirement in section 2.2 of the SCDCP 2005, it nonetheless achieves the objective of being a site with sufficient width to permit adequate and safe vehicular access inside boundary setbacks.
- 5.27 Further, the density of the site is dictated by compliance with the setbacks within the SCDCP 2005 building envelope, minimum unit sizes, parking compliance and primary landscape area<sup>6</sup> controls (including building footprint). As a general rule of thumb, NSW Department of Planning and Environment planning guidelines advise that in considering FSR controls, "*Small sites with a single building may have greater floor space capacity than larger sites with multiple buildings*". The proposal demonstrates compliance with these controls and therefore ensures that development aligns with the optimum capacity of the site and is consistent with the desired density of the R3 zone.

---

<sup>4</sup> Excluding the area of any carport or garage.

<sup>5</sup> An exception is provided where an existing dwelling house already exceeds the FSR of 0.5:1 and it is proposed to convert the dwelling into an attached dual occupancy without increasing the total floor space.

<sup>6</sup> The proposed development satisfies the landscape control by providing an additional 47% landscape area above the minimum requirement in SCDCP 2005.

- 5.28 An equivalent lot size in an R2 low density zone would achieve a maximum FSR of 0.6:1. The density of the proposed development at 0.86:1 is suitable for land zoned R3 zone. It is noted that an FSR that is significantly higher than 0.86:1 has been already developed in the most recently built site within the immediate R3 zone precinct at 40 Bates Street Homebush which has an FSR based on a preliminary assessment of approximately 1.1:1.
- 5.29 Despite the non-compliance, the proposed development complies with all other statutory planning controls and SCDCP 2005 controls (except for minimum lot size and the street frontage numerical control), including in relation to building envelope and side and rear setbacks and will provide additional housing stock and housing choice, including generous bedroom sizes, and housing types in a location that is in close proximity to good public amenities and services.
- 5.30 For these reasons, the density proposed is appropriate for the site and the locality and the proposed development achieves the planned residential density for the R3 zone.

**Wehbe 3- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable**

- 5.28 If compliance with the minimum lot size of 1000 m<sup>2</sup> was required, the underlying purpose of the density standard would be thwarted. The site would be an isolated medium density residential site not able to be amalgamated with any R3 zone land. The other R3 zone land in the immediate locality at 31-33 Mackenzie and 40 Bates Street, Homebush have already been developed for townhouses. Land to the south is zoned R2 Low Density Residential and townhouses are prohibited on R2 zoned land.
- 5.29 The strategic objective of developing the subject site for townhouses can be achieved without generating any unreasonable environmental impacts.
- 5.30 The proposed townhouses provide an appropriate form of medium density residential development on the site. The development has been designed having regard to the site area and offers a high level of amenity for future residents without compromising on the level of amenity to neighbouring properties. It will provide a well-designed small townhouse development of four dwellings, one of which is adaptable and two of which provide for a fourth bedroom and bathroom at ground level, thus ensuring that housing is accessible to older people and people with mobility disabilities; the proposed development responds to the width of the site and the site area, complies with the height control in clause 4.3 of SLEP 2012 and the building envelope controls in Part C of the SCDCP 2005, including in relation to setbacks and landscaping.<sup>7</sup>
- 5.31 The townhouses are grouped in a single block of four (4) dwellings and the proposed building form consists of recessed and articulated building elements, including a mix of building materials which reduces any perceived massing of the building.
- 5.32 Pathways and landscaping further break the building mass and provide permeability through the site. The townhouses are a terrace style as the garages are not visible from the street and incorporated into a basement structure. This eliminates a predominance of garages on the street frontage and provides a higher quality-built form.
- 5.33 The material palette is contemporary and uses a mix of building materials, colours and finishes including face brickwork, metal roof cladding and gutters (dark colour) to compliment the overall form and scale of the townhouse development.
- 5.34 The building is provided with aluminium framed glass windows to promote the use of natural light entering living areas and bedrooms as well as to create a more open expansive environment.

---

<sup>7</sup> Except for the minimum lot size for multi dwelling housing, 1000 m<sup>2</sup> and 30 m width requirement in section 2.2 of the DCP. See compliance table.

- 5.35 Each townhouse is afforded private open space in the form of a small courtyard above NGL. Townhouse 4 is provided with a small court facing north while a secondary private courtyard is located at the rear, which is accessible from the upper level courtyard.
- 5.36 Townhouse 1 is provided with a generous courtyard within the front setback, which is screened from the street by a brick fence. These individual courtyards serve as private recreational areas as well as providing an outlook for occupants from the townhouses. They are to be well landscaped and will provide a high level of amenity for future residents.
- 5.37 The deep soil areas at the front and rear of the site are afforded good, landscaped plantings. The combined effect of lush landscaping and contemporary designed townhouses will provide a desirable, attractive streetscape and urban fabric.
- 5.38 This form of medium density Residential development would be thwarted if compliance with the 1000 m<sup>2</sup> minimum lot requirement was required.
- 5.39 The Council's suggestion of a dual occupancy development on the site would not involve the orderly and economic development of land in accordance with section 1.3(c) of the EP & A Act and would not be consistent with the zone objectives having regard to the area of the site, which is 696.8 m<sup>2</sup> and having regard to the other townhouse development approved by the Council at 31 Mackenzie Street and 40 Bates Street, Homebush. It would allow the site to provide only two dwellings or as a proposed development would provide for four dwellings. This also results in a lower FSR or density that could be achieved for the equivalent site area in an R2 low density zone (refer to 4.4C Exceptions to floor space ratio (Zone R2) of SLEP 2012).
- 5.40 Therefore, compliance with the minimum lot size for multi dwelling housing would undermine the provision of increased density in this neighbourhood.
- 5.41 in addition, approval of the lot size contravention in this instance would not create an undesirable precedent as the subject proposal is the last site left within the immediate locality. zoned R3.

**Wehbe 4 -The development standard has been virtually abandoned or thwarted by Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable**

- 5.42 The minimum lot size standard has been thwarted by the Council's own actions such that compliance would be unnecessary and unreasonable.
- 5.43 The site is an isolated site, being surrounded by R2 Low Density Residential zoned land to the south and cannot be amalgamated with any adjoining land to achieve the 1000 m<sup>2</sup> development standard. It is the last remaining parcel of R3 zoned land in this immediate locality yet to be developed for multi dwelling housing.
- 5.44 The villa development at 31-33 Mackenzie Street and 38 Bates Street Homebush, involved the subdivision of 33 Mackenzie Street with the rear of 33 Mackenzie comprising the tennis courts being developed for villas.<sup>8</sup> It satisfied the minimum controls for multi-unit housing at the time of assessment including the 15 metre frontage control and 560 m<sup>2</sup> minimum lot size.
- 5.45 When development consent was granted for the adjoining site on 5 June 2001 it was intended that 33 Mackenzie Street be developed as a multi-unit development in the future.
- 5.46 The subject site also benefits from an easement to drain storm water in its favour that aims to facilitate future development of the site (while the *Kasif* case benefited from a driveway easement to facilitate future development to the site). In both instances, the easements aim

---

<sup>8</sup> See Council Report 5 June 2021 DA 0001/137-31-33 Mackenzie Street and 38 Bates Street, Homebush.

to facilitate future development of the smaller isolated site to avoid their sterilisation in order to meet their medium density objectives.

- 5.47 It is also noted that 31-33 Mackenzie Street and 40 Bates Street, have street frontages that would not comply with a 30 m street frontage requirement in the SCDCP 2005. The townhouse development at 31 Mackenzie Street has a primary frontage of 15.24 m on Mackenzie Street and a secondary street frontage of 14.02 m on Bates Street. The site immediately to the west, 40 Bates Street has been developed for townhouses on a 15.24 m street frontage.

**Clause 4.6(3)(b) - Sufficient Environmental Planning Grounds to Justify the contravention of the minimum lot standard**

- 5.48 The following are environmental planning grounds that justify the contravention of the minimum lot standard:

- The proposed development achieves the planned residential density for the R3 Medium Density Residential zone notwithstanding that it does not meet the 1000 m<sup>2</sup> standard
- The site is an isolated R3 Medium Density Residential site and cannot be amalgamated with any adjoining R3 zoned land to achieve the minimum lot size of 1000 m<sup>2</sup>. The other R3 zone land in the immediate locality at 31-33 Mackenzie and 40 Bates Street, Homebush have already been developed for townhouses. Land to the south is zoned R2 Low Density Residential and medium density dwellings are prohibited on R2 zoned land
- When development consent was granted for the adjoining site and 38 Bates Street, Homebush at 31-33 Mackenzie Street on 5 June 2001 it was intended that the balance of 33 Mackenzie Street would be developed as a multi-unit development in the future
- The proposal will provide 4 townhouses to the local housing market, which is consistent with a Plan for Growing Sydney and adopted and District Plans for this region, which promote quality housing stock and choice in an accessible established neighbourhood. The site is in a highly desirable location given its accessibility to public transport, retail, sporting and community facilities, active open space and a range of services. Medium density housing in such a location optimises the number of people able to take advantage of such a desirable location and reduces the demand for housing in far less accessible fringe areas of the Metropolitan Area. This would not be able to be provided if compliance with the minimum lot standard was required
- Other forms of residential development permissible on the site that do not require a minimum lot size of 1000 m<sup>2</sup> are not forms of medium density residential, they are forms of low-density housing that are permissible in the R2 Low Density Zone e.g., attached dwellings, dwelling houses, secondary dwellings, semi-detached dwellings. Those forms of development on the R3 zoned site would not be the orderly and economic development of the land in accordance with section 1.3(c) of the EP&A Act, having regard to its site area of 696.8 m<sup>2</sup>
- A dual occupancy development would not involve the orderly and economic development of land in accordance with section 1.3(c) of the EP & A Act and would not be consistent with the zone objectives having regard to the area of the site and other townhouse development approved by the Council at 31-33 Mackenzie Street and 38 Bates Street, Homebush, 40 Bates Street, Homebush. A dual occupancy development would reflect a density that is lower than an equivalent lot size in the R2 zone. That is, SDCP 2005 controls impose a maximum FSR of 0.5:1, or 100m<sup>2</sup>

for a detached dual occupancy. Whereas, an equivalent lot size in an R2 zone generates a higher maximum FSR of 0.6:1 (refer to clause 4.4C of SLEP 2012). This results in a lower maximum GFA in the R3 zone when compared to the same lot size in an R2 zone. Therefore, objectives of zone are defeated or thwarted (Wehbe 3)

- The proposed development complies with the 9.5 m height requirement and although there is no floor space ratio control that applies to the site, provides an effective FSR of 0.86:1, which is not excessive in a medium density residential zone
- The proposed built form and setbacks comply with the SCDCP 2005 building envelope controls which regulate density on the site.

5.49 The Council's contention that a high quality residential development could be achieved without a variation to the minimum lot size is not a relevant consideration under clause 4.6 (3)(b).

**6. Clause 4.6 (4)(a)(ii)-The proposed development will be in the public interest because it is consistent with the objectives of the minimum lot standard and the R3 zone objectives**

6.1 Development consent must not be granted for the proposed development 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.

6.2 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: *Initial Action* per Preston CJ at [27].

6.3 The proposal has been assessed against the objectives of the R3 Medium Density Residential zone, being:

- provide for the housing needs for the community in a medium density residential environment;
- provide a variety of housing types within a medium density residential environment,

and against the objectives for minimum lot size for, multi dwelling housing.

**Compliance with the minimum lot size objectives**

6.4 The proposed development is consistent with the objectives of the development standard in clause 4.1A of SLEP 2012 for the same reasons that the objectives of the minimum lot standard are achieved notwithstanding the non-compliance. This is discussed in paragraphs 5.11 to 5.30 above.

**Compliance with Zone Objectives**

6.5 The site is zoned R3 Medium Density Residential under the provisions of SLEP 2012. See extract of zone map at **Figure 2**.





## Strathfield Local Environmental Plan 2012

Land Zoning Map - Sheet LZN\_004

### Zone

B1	Neighbourhood Centre
B2	Local Centre
B3	Commercial Core
B4	Mixed Use
B6	Enterprise Corridor
B7	Business Park
E2	Environmental Conservation
IN1	General Industrial
IN2	Light Industrial
R2	Low Density Residential
R3	Medium Density Residential
R4	High Density Residential
RE1	Public Recreation
RE2	Private Recreation
SP1	Special Activities
SP2	Infrastructure

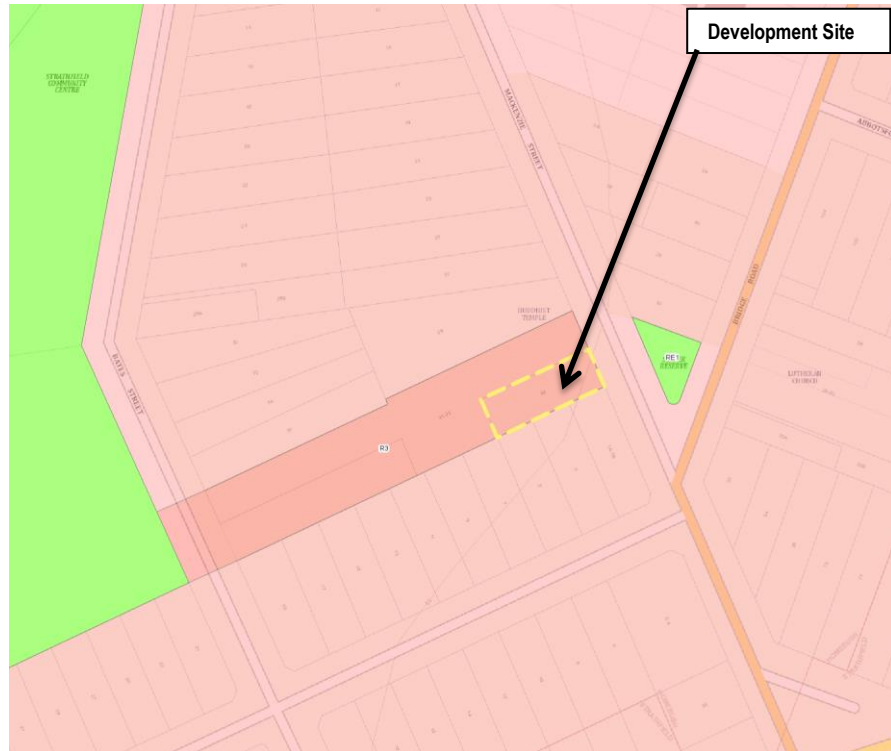


Figure 2

Source: SLEP 2012 – Zone Map

6.6 The zone objectives are set out and addressed as follows:

### R3 Medium Density Residential

#### **Objectives of zone**

- 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.

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

### Response

6.7 The proposed townhouse development provides for the housing needs of the community within a medium density residential development by providing for new dwellings in a townhouse format in proximity to public transport, retail, sporting and community facilities and active open space.

6.8 Medium density housing in such a location optimises the number of people able to take advantage of such a desirable location and reduces the demand for housing in far less accessible fringe areas of the Metropolitan Area.

6.9 It represents an appropriate response to the type of medium density housing promoted throughout the Strathfield local government area and meets the substantial demand for centralised development comprising quality residential accommodation.

6.10 It provides for the construction of a boutique townhouse development comprising 1 x 3 bedroom and 3 x 4 bedroom townhouses, with associated private open space, landscaping

and 8 garage car parking spaces in the basement car park, including 1 accessible space and 1 visitor space.

- 6.11 The habitable rooms of each townhouse are accessible from the secured basement garage my internal stairs to the upper levels. Townhouse 1 is designed as an adaptable unit, including the provision of the lift from the basement up to Level 2. Townhouses 2 and 3 are each provided with a bedroom and bathroom at ground floor level which ensures that the housing is accessible to older people and people with mobility disabilities.
- 6.12 The urban design of the proposed development has been developed in response to the assessment of a number of site characteristics and design parameters which have been determined following a comprehensive site analysis and an evaluation of the existing built environment, particularly the bulk and scale of existing development adjoining the site. The siting and design of the townhouses is in response to the sloping topography of the site by providing a built form that follows the east-west contours of the site towards the west.
- 6.13 The proposed development complies with the 9.5 m height requirement, which is also the same height requirement that applies to adjoining development on sites zoned R3 and R2.
- *Objective-To provide a variety of housing types within a medium density residential environment.*

#### **Response**

- 6.14 The proposed development provides a variety of housing types. It provides for the construction of a 1 x 3 bedroom and 3 x 4 bedroom townhouses, catering for a variety of households, with associated private open space, landscaping and 8 garage car parking spaces in the basement car park, including 1 accessible space and 1 visitor space. All dwellings are more than 120 m<sup>2</sup> which is larger than existing neighbouring townhouse developments.
- 6.15 The habitable rooms of each townhouse are accessible from the secured basement garage my internal stairs to the upper levels. Townhouse 1 is designed as an adaptable unit, including the provision of the lift from the basement up to Level 2. Townhouses 2 and 3 are each provided with a bedroom and bathroom at ground floor level which ensures that housing is accessible to older people and people with mobility disabilities.
- 6.16 Each townhouse is provided with 2 garaged car spaces, with Townhouse 1 provided with an accessible space. The additional cars will generate a small number of additional traffic movements to that of the existing dwelling house on the site. The increase in traffic movements will easily be able to be absorbed into the local road network and the site contains no significant trees worthy of retention.
- 6.17 The proposed development site, along with the sites to the north (31 Mackenzie Street) and west (40 Bates Street) were specifically rezoned to permit townhouses. As depicted in **Figure 2** all land surrounding the R3 zone is zoned R2 Low Density Residential. It was clearly the Council's strategic vision to allow all of those parcels of land zoned R3 to be developed for medium density housing in the form as that proposed.
- *Objective-to enable other land uses that provide facilities or services to meet the day to day needs of residents.*

#### **Response**

This objective is not applicable to this written request.

#### **Summary**

- 6.18 The consent authority can be satisfied that the proposed townhouse development is consistent with the objectives of the minimum lot size development standard and the

objectives of the R3 zone and that accordingly, the proposed development will be in the public interest.

- 6.19 Although not strictly required by the terms of clause 4.6, there would be no public benefit in maintaining the minimum lot size development standard. because requiring compliance with the standard would result in the sterilisation of the subject land for any form of medium density housing. This would be inconsistent with the objectives of the minimum lot size development standard, the objectives of the R3 Medium Density Residential zone, and the objective for the orderly and economic use of land in accordance with section 1.3(c) of the EP&A Act.

## **7. Clause 4.6 (4)(b) - Concurrence of the Planning Secretary**

- 7.1 Clause 4.6(4)(b) requires the concurrence of the Planning Secretary to be obtained prior to the granting of consent to a development that contravenes a development standard.
- 7.2 The Council has advised<sup>9</sup> that because the variation is more than 10% of the minimum lot size development standard in clause 4.1 A of SLEP 2012, the development application will be determined by the Strathfield Local Planning Panel.
- 7.3 Concurrence can be assumed by the Strathfield Local Planning Panel in accordance with the Planning Secretary's Assumed concurrence notice dated 21 February 2018.
- 7.4 Notwithstanding, provided below are other matters under clause 4.6(5).

## **8. Whether Contravention of the Development Standard Raises any Matter of Significance of State or Regional Environmental Planning**

- 8.1 The variation to the minimum lot size control set out under clause 4.1A of the SLEP 2012 will not raise any matter which could be deemed to have State or Regional significance. The variation sought will not contravene any overarching State or Regional objectives or standards, rather it will contribute to the achievement of dwelling targets. Beyond this positive contribution, the proposed variation sought will not have any effects outside of the sites immediate area.

## **9. Conclusion**

- 9.1 The Strathfield Local Planning Panel can be satisfied, pursuant to clause 4.6(4) of SLEP 2012, that:
- (a) This written request has in fact demonstrated, in accordance with clause 4.6(3) of SLEP 2012, that:
    - (i) compliance with the minimum lot size development standard in clause 4.1A of SLEP 2012 applying to multi dwelling housing is unreasonable and unnecessary in the circumstances of this case; and
    - (ii) there are sufficient environmental planning grounds to justify the contravention of the development standard;
  - (b) The proposed townhouse development will be in the public interest because it is consistent with the objectives of the minimum lot development standard and the objectives of the R3 Medium Density Residential zone; and
  - (c) The Planning Secretary's concurrence has been obtained because concurrence is assumed.

---

<sup>9</sup> Letter dated 8 October 2021.

9.2 This written request has demonstrated that compliance with the minimum lot size development standard is unreasonable and unnecessary in this case because:

- (a) Wehbe 1: The objective of the development standard, namely, to achieve the planned residential density in the R3 zone is achieved, despite the non-compliance with the 1000 m<sup>2</sup> minimum site area control. The proposed development is consistent with the objectives of the R3 zone; despite the site not being affected by any floor space ratio control, the floor space ratio of 0.86:1 of the proposed development is appropriate for the site in a medium residential environment; the proposed development complies with almost all controls applying to the development under Part C of SCDCP 2005 except for the 1000 m<sup>2</sup> site area and the 30 m frontage control;
- (b) Wehbe 3: The underlying object or purpose of the minimum lot size standard would be thwarted if compliance with the development standard was required. The site would be an isolated medium density residential site not able to be amalgamated with any R3 zone land. The other R3 zone land in the immediate locality at 31-33 Mackenzie and 40 Bates Street, Homebush have already been developed for townhouses. Land to the south is zoned R2 Low Density Residential and townhouses are prohibited on R2 zoned land; and
- (c) Wehbe 4: The minimum lot size development standard has been thwarted by the Council's own actions in granting consent departing from the standard. As indicated in the preceding paragraph, the site is an isolated site. The villa development at 31-33 Mackenzie Street and 38 Bates Street Homebush, involved the subdivision of 33 Mackenzie Street with the rear of 33 Mackenzie comprising the tennis courts being developed for villas.<sup>10</sup> It satisfied the minimum controls for multi-unit housing at the time of assessment including the 15 metre frontage control and 560 m<sup>2</sup> minimum lot size. When development consent was granted for the adjoining site on 5 June 2001 it was intended that 33 Mackenzie Street be developed as a multi-unit development in the future.

9.3 This written request has demonstrated that there are sufficient environmental planning grounds to justify the contravention of the minimum lot size development standard for the same reasons that compliance with the development standard is unreasonable and unnecessary in this case and for the additional reasons set out in paragraph 5.48 above. Importantly, the contravention achieves the objective in section 1.3(c) of the EP&A Act of promoting the orderly and economic use and development of land. A dual occupancy development on the site as suggested by Council would be an underdevelopment of the site and would not achieve this objective.

9.4 The Strathfield Local Planning Panel can be satisfied that the proposed townhouse development will be in the public interest because:

- (a) It is consistent with the objectives of the minimum lot standard, for the same reasons that the objectives of that development standard are achieved, notwithstanding the non-compliance with the minimum lot size development standard; and
- (b) It is consistent with the objectives for development in the R3 zone to provide for the housing needs of the community and a variety of housing types, within a medium density residential environment.

The proposed development provides for new dwellings in a townhouse format in proximity to public transport, retail, sporting and community facilities, active open-space and a range of services.

---

<sup>10</sup> See Council Report 5 June 2021 DA 0001/137-31-33 Mackenzie Street and 38 Bates Street, Homebush.

The proposed development provides for the construction of four townhouses catering for a variety of households with associated private open space, landscaping and basement car park. Each townhouse is provided with two garaged car parking spaces. Townhouse 1 is mobility accessible and includes a lift and Townhouses 2 and 3 are each provided with a bedroom and bathroom at ground floor level which ensures that housing is accessible to all the people and people with mobility disabilities.

A handwritten signature in black ink that reads "Allan Caladine". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Allan Caladine  
Town Planning Consultant  
Caladines Town Planning Pty Ltd

27 October 2021