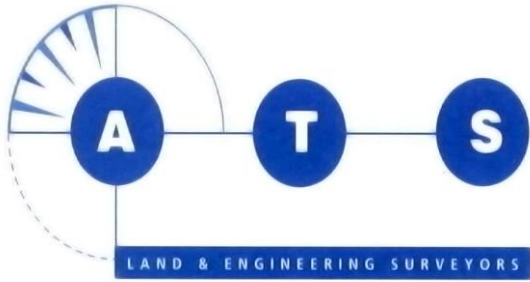


CLAUSE 4.6 VARIATION REQUEST

***33 Copeland Road
Beecroft***

November 2021



1. Introduction

This Clause 4.6 Variation Request has been prepared in reference to varying the minimum lot size standard included in Clause 4.1A Minimum subdivision lot size for strata plan schemes in certain zones in the Hornsby Local Environmental Plan 2013 (HLEP 2013). The proposal, as detailed in the Statement of Environmental Effects, is a strata subdivision of three existing villas into three lots and common property on the site known as Lot 34 DP 1208064, No. 33 Copeland Road, Beecroft. The site is located in the R2 low density residential zone.

2. Zoning and objectives of the zone

As just mentioned, the site exists in the R2 low density residential zone as shown in Figure 1.

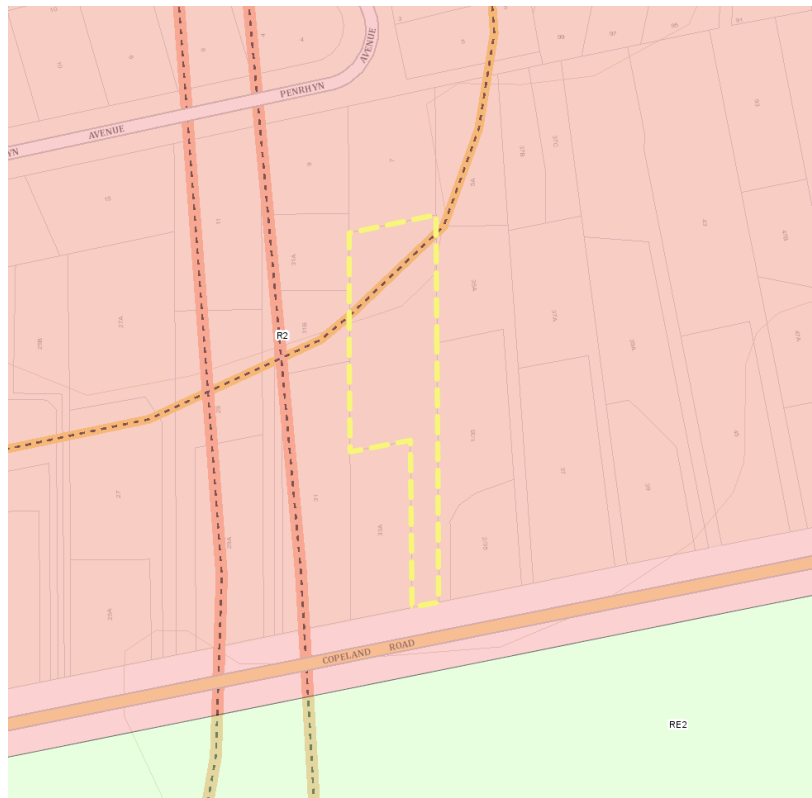


Figure 1: Planning control excerpt from ePlanning Spatial Viewer

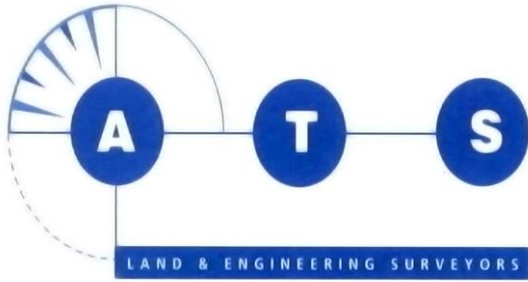
The objectives of the zone are as follows, extracted from the HLEP 2013:

- ***To provide for the housing needs of the community within a low density residential environment.***
- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

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3. Development standard to be varied

The development standard to which the Clause 4.6 Variation applies to is the Clause 4.1A Minimum subdivision lot size for strata plan schemes in certain zones from the HLEP 2013. It is detailed as follows:

(1) The objective of this clause is to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.

(2) This clause applies to land in the following zones that is used, or is proposed to be used, for residential accommodation or tourist and visitor accommodation—

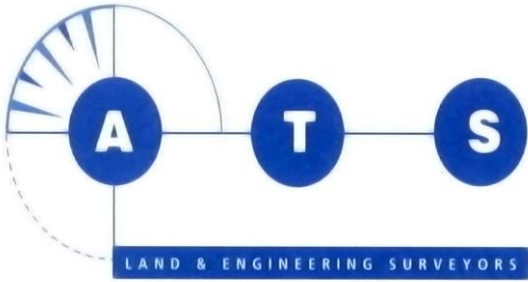
- (a) Zone RU1 Primary Production,***
- (b) Zone RU2 Rural Landscape,***
- (c) Zone RU4 Primary Production Small Lots,***
- (d) Zone RU5 Village,***
- (e) Zone R2 Low Density Residential,***
- (f) Zone SP3 Tourist,***
- (g) Zone E2 Environmental Conservation,***
- (h) Zone E3 Environmental Management,***
- (i) Zone E4 Environmental Living.***

(3) The size of any lot resulting from a subdivision of land to which this clause applies for a strata plan scheme (other than any lot comprising common property within the meaning of the Strata Schemes (Freehold Development) Act 1973 or Strata Schemes (Leasehold Development) Act 1986) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

Note—

Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provides that strata subdivision of a building in certain circumstances is specified complying development.

(4) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.



4. Proposed variation to development standard

The proposed strata subdivision is shown on the subdivision plan prepared by ATS Surveyors below in figures 2-3. The overall site area 2049 sqm, is to be subdivided into 3 strata lots and common property. Lot 1 is 387 sqm, lot 2 is 407 sqm, lot 3 is 510 sqm.

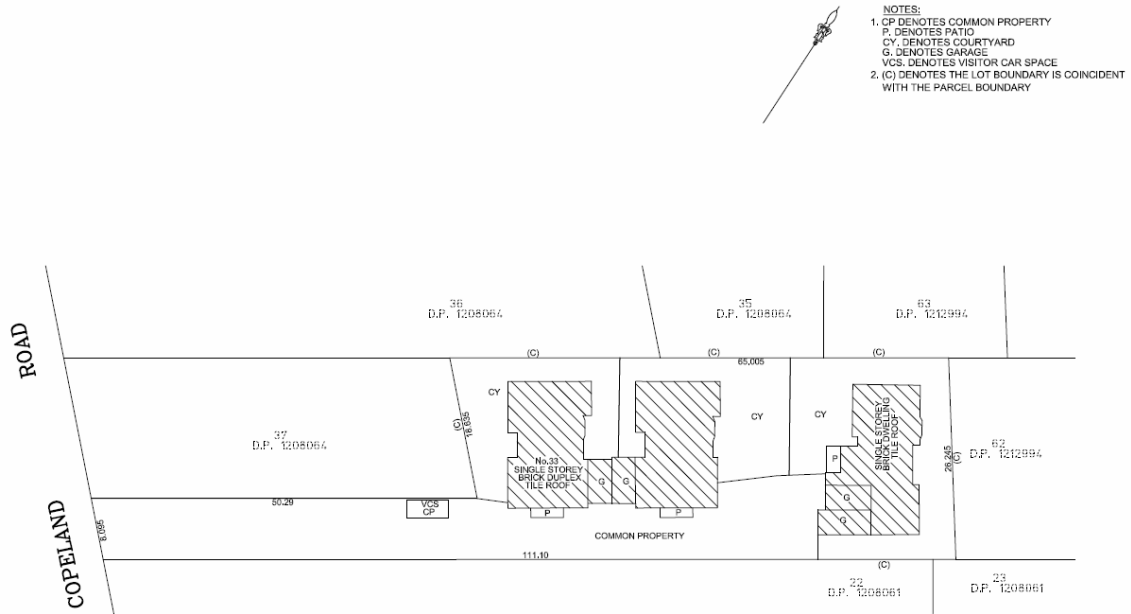


Figure 2: Location plan of strata plan

- NOTES:
- ALL AREAS ARE APPROXIMATE
 - CY DENOTES COURTYARD
 - P. DENOTES PATIO
G. DENOTES GARAGE
VCS. DENOTES VISITOR CAR SPACE
 - N. DENOTES PROLONGATION OF NORTHERN FACE OF WALL
E. DENOTES PROLONGATION OF EASTERN FACE OF WALL
S. DENOTES PROLONGATION OF SOUTHERN FACE OF WALL
W. DENOTES PROLONGATION OF WESTERN FACE OF WALL
∠ DENOTES 90°
 - THE WHOLE OF THE STRUCTURE OF THE BUILDING STANDING ON EACH LOT, INCLUDING WALLS, FLOORS, CEILINGS AND ROOFS, FORM PART OF LOT AND IS NOT COMMON PROPERTY EXCLUDING THE COMMON WALL WHICH IS COMMON PROPERTY
 - ALL LOTS ARE LIMITED IN STRATUM FROM 50 BELOW TO 50 ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE UNITS GROUND FLOOR SLAB.
 - ANY SERVICE LINES WITHIN ONE LOT SERVICING ANOTHER LOT IS COMMON PROPERTY
 - ANY COMMON SERVICE LINES ARE COMMON PROPERTY
 - THE COMMON WALL (B) IS COMMON PROPERTY
 - THE STRATUM OF THE PATIO
EXTEND 3 ABOVE THE UPPER SURFACE OF THEIR PAVED FLOOR, EXCEPT WHERE COVERED WITHIN THIS LIMIT.
 - THE STRATUM OF THE COURTYARDS EXTEND 5 ABOVE & 5 BELOW THE UPPER SURFACE OF THE ADJOINING GROUND FLOOR UNIT EXCEPT WHERE COVERED WITHIN THIS LIMIT

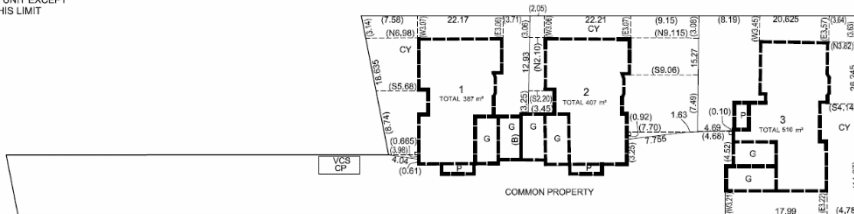
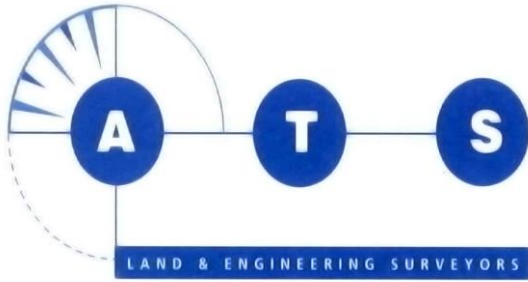


Figure 3: Ground level of strata plan

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As mentioned prior, the minimum lot size the R2 low density residential zone is 600m². Hence, the maximum percentage variation proposed is 35.5% from the proposed lot 1.

5. Matters of consideration under Clause 4.6

Comments on the individual issues of Clause 4.6 will be included in this section.

(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.

Comment: The proposal uses this flexibility to provide better outcomes through improving the use of the villas through subdivision, which is detailed in the following section.

(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.

Comment: The minimum lot size standard is not expressly excluded from 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.

Comment: The following two sections (6 & 7) justifies the variation.

(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

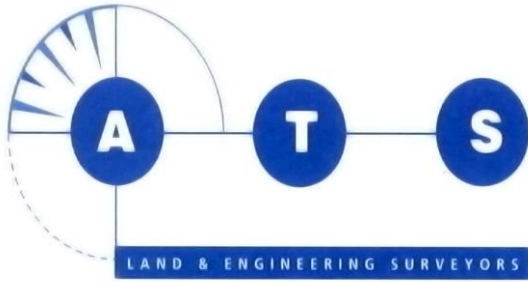
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

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Comment: This report addresses all requirements of subclause (3). Section 8 details how the proposal is in the public interest, as well as satisfying objectives of the development standard and the objectives of the zone. Concurrence is assumed but is a matter to be determined by Hornsby Council.

(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.

Comment: There are no matters of significance for state or regional environmental planning. The issue of public benefit is detailed in section 8.

(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 E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 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

(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.

Note—

When this Plan was made it did not include of these zones.

Comment: Not applicable.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

Comment: This is a matter for Hornsby Council.

(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,

(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,

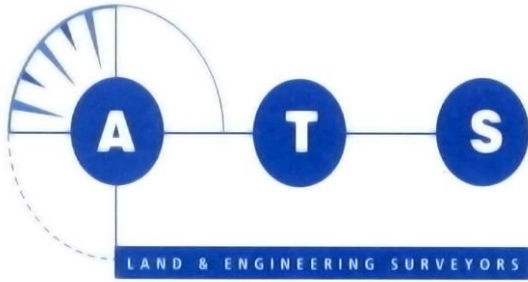
(c) clause 5.4.

Comment: Not applicable.

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(8A) This clause does not allow development consent to be granted for development that would contravene clause 4.4 for a building on land in Zone B2 Local Centre within the Epping Town Centre, identified as “Area 9” on the Floor Space Ratio Map for the following purposes—

- (a) boarding houses,**
- (b) group homes,**
- (c) hostels,**
- (d) shop top housing,**
- (e) tourist and visitor accommodation,**
- (f) a mixed use development comprising a combination of uses specified in paragraphs (a)–(e).**

Comment: Not applicable.

(8B) Subclause (8A) and this subclause are repealed at the beginning of 31 July 2024.

Comment: Not applicable.

6. How compliance with the development standard is unreasonable in the circumstances of this particular case

The proposal of strata subdivision is entirely reasonable as the development of the villas is inherently tied with strata subdivision in order for individual lots and common property to be created. Common property in this case is related directly to the access handle which is critical for all owners and visitors. Thus, the proposal satisfies the objective of the development standard, as it supports individual ownership of the lots and does not create additional dwelling entitlements, as the subdivision is based entirely existing dwellings (i.e. three residential villas being three lots and common property for access).

By denying the proposed subdivision and enforcing compliance with the standard, it goes against the objective set out by the standard. It would leave the three individual dwellings as the existing lot which is unreasonable for a number of reasons. Most problematically, it would leave the owners of the three existing villas under one title which by itself is unnecessary. As such, the individual addressing of each villa is not officially registered, leaving further complications for the owners of each villa.

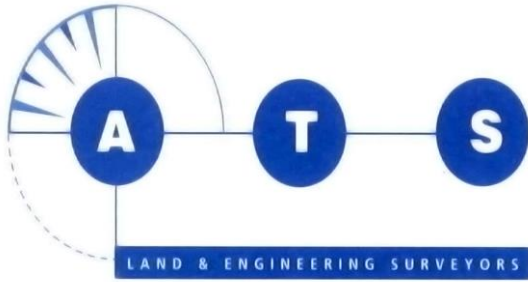
A similar case to where a clause 4.6 variation had been granted by Hornsby Council was for DA/1100/2019 where the minimum lot size development standard was varied. A 32.42% variation in lot size was allowed in the proposed development, which was a Torrens title subdivision of one allotment (lot 3 in DP35906) into two lots. The justification for the variation from Hornsby Council was:

- ***The proposal would convert a prohibited ‘dual occupancy’ development to a permissible use (dwelling house) within the R2 Low Density Residential zone under the HLEP.***
- ***Approval of the application for Torrens title subdivision would not alter the intensity or scale of the existing development on the site. The proposal would allow the***

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existing dwellings to be on separate titles, thereby adding economic value and versatility to existing housing stock.

This current proposal is similar in extent in terms of the variation, and while it is a strata subdivision, the points of justification are fairly similar. As previously established, it would allow separate dwellings to be under separate titles, and therefore separate ownership, thereby supporting the objectives of the R2 zoning. The other points of justification are similarly shared and will be expanded upon in the following sections.

7. Sufficient environmental planning grounds to justify the contravention

The proposed variation is fairly notable when considered quantitatively, but is justified in the following points:

- The proposal of the construction of the villas was previously approved by Hornsby Council and subdivision of the land would inherently be associated with it.
- Separate titles, and separate ownership for each villa would be achieved, thereby making sales/purchases far easier, and like the previously mentioned case, it would reap similar benefits of adding economic value and versatility to housing stock. It helps to achieve objectives of the R2 zone by allowing separate ownership for of each villa, thereby making it easier to satisfy the housing needs of the local community without creating additional dwelling entitlements.
- Having common property will allow for a common space for access that will be maintained by all owners through a strata scheme.
- Since the proposal is only a subdivision of existing villas, it will have no adverse impacts on adjoining properties. The existing villas already fit in with the character of the local area, being mostly low-density residential.

8. Consideration of public interest

The proposal is purely a strata subdivision and the contravention of the development standard does not intensify existing land use, nor propose any alterations or construction that would affect the local community. It will have benefits for the owners of the villas, providing individualised ownership for housing, without creating additional dwelling entitlements and will have no impact on the public. It satisfies the objectives of the original clause, as well as the objectives of the R2 zone and therefore would be in the public interest.

9. Conclusion

Overall, the Clause 4.6 Variation is well-founded and while the quantitative measure of the variation is notable, there are a range of benefits that will result from it. Therefore, the variation is appropriate given the circumstances of this case.