



**Clause 4.6 written request
to vary development
standard:
Proposed Boundary
Adjustment, Strata
Termination and
conversion to conventional
Torrens Title Subdivision.**

**LOTS 1 AND 2 SP 41548
(WITHIN LOT 118 DP 1213697)
15 CARLISLE CRESCENT
BEECROFT.**

Ref: 55795 BOUNDARY ADJUSTMENT

29/06/2022

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1. INTRODUCTION

This is a Clause 4.6 written request regarding the proposed 2 Lot strata subdivision conversion to a two lot conventional land Torrens title subdivision at 15 Carlisle Crescent, Beecroft. The written request relates to the minimum subdivision lot size of the proposed development.

The site consists of two established freestanding dwellings. The two dwellings form a detached dual occupancy within Strata plan 41548 , approved by Hornsby Shire Council and registered with Land Registry Services 30 years ago.

This request together with attached Statement of Environmental Effects seeks development consent to subdivide the land into two lots and change the title tenure from strata to conventional Torrens Title land Subdivision. The proposal is more fully described in the attached Statement of Environmental Effects and subdivision plan prepared by Barry Hunt Associates dated 29/6/22.

The purpose of this request is to seek a variation to the minimum subdivision lot size prescribed under clause 4.1 of Hornsby Local Environmental Plan (LEP) 2013, being a development standard as defined under section 1.4 of the Environmental Planning and Assessment Act. This written request demonstrates compliance with the development standard is unreasonable or unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to justify contravening the minimum 600 m² lot size development standard.

Part 2 of this written request describes the proposed contravention of the development standard and describes the key elements of Clause 4.6 of Hornsby Local Environmental Plan (HELP) 2013.

Part 3 establishes compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Part 4 confirms there are sufficient environmental planning grounds to justify the contravention of the development standard.

Part 5 confirms the proposed development is in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 Low Density Residential zone.

Part 5 also addresses the matters to be considered by the Secretary.

Part 6 provides a conclusion.

2. PROPOSED CONTRAVENTION TO DEVELOPMENT STANDARD

Is The 'Minimum Lot Size' For Subdivision a Development Standard?

Section 1.4 of the Environmental Planning and Assessment Act defines a 'development standard' to mean:

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

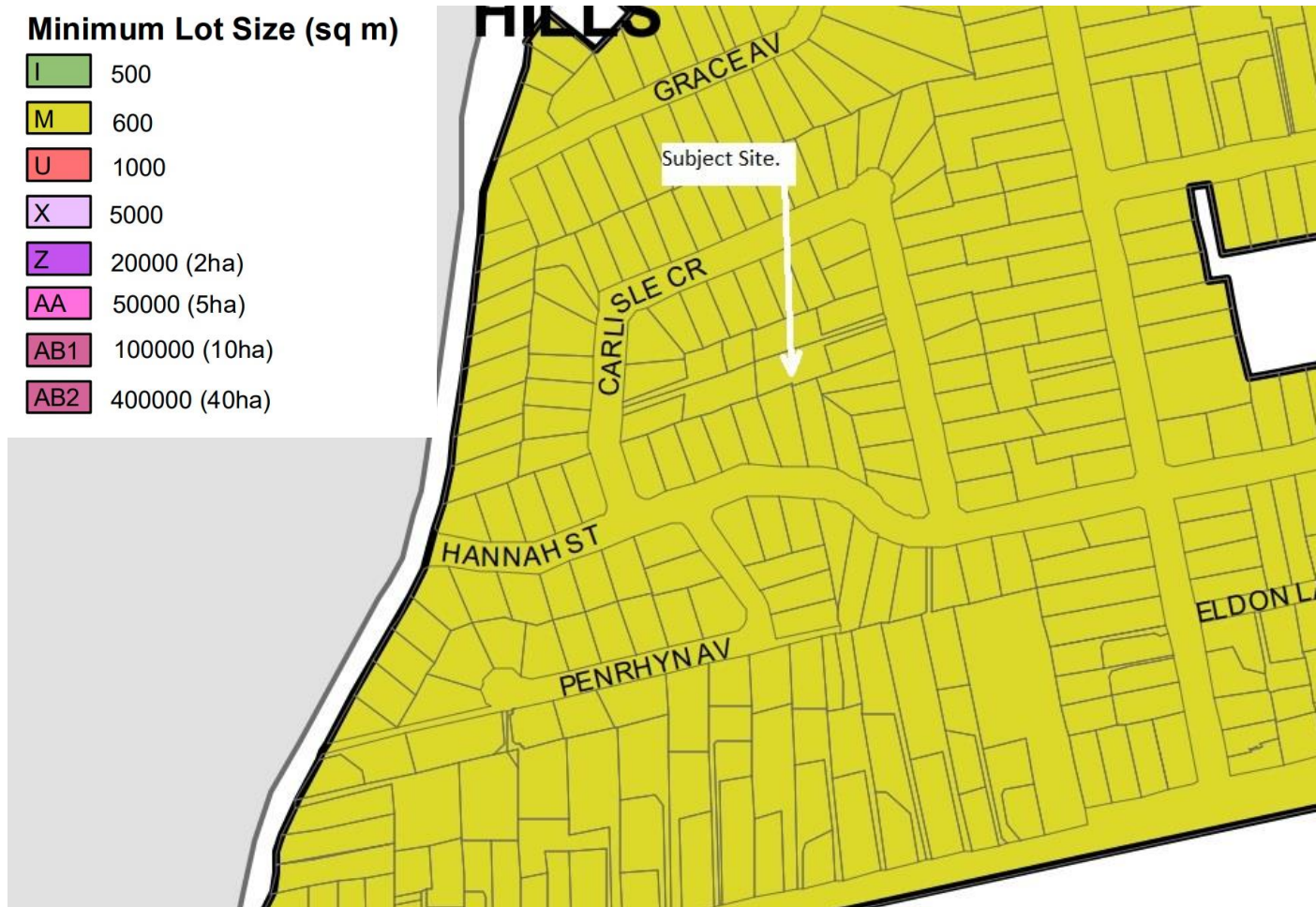
- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, 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,
- (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.”

Hornsby Local Environmental Plan (LEP) 2013, Part 4, Section 4.1, minimum subdivision lot size, clauses 2 and 3 state:

- (2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

In accordance with the following extract from HLEP, the subject lot is identified on the Lot size map. The Lot size map defining the minimum subdivision lot size for the subject site is 600 m².



Extract from Hornsby Local Environmental Plan Lot size map indicating subject site.

Map identification number: 4000_COM_LSZ_010_020_20140818.

The minimum subdivision lot size of the HLEP 2013 is a development standard as defined under section 1.4 of the Act.

As detailed in the below subdivision plan, Lot 1 is 452.6 m² (excluding battleaxe handle) and Lot 2 is 420.0 m² (excluding battleaxe handle). The degree of variation to the 600 m² minimum lot size development standard is 25% and 30% for lots 1 and 2 respectively.

It would be unreasonable and unnecessary for the development to comply with the development standard due to the following particular circumstances of the present case:

1. The dwellings located on the site are existing and are to be retained as part of this application.
2. No physical works are proposed on the site other than replacement of a water isolation valve with a water metre to effect the change in title tenure and therefore no environmental impact will occur.
3. The proposed dividing boundary between the 2 properties replicates the existing 1992 strata dividing boundary.
4. The proposed subdivision is required to rectify an outdated Strata Plan which no longer reflects approved buildings on the site.
5. The approved detached dual occupancy buildings have provided separately titled dwellings for over 30 years. The proposal continues to reflect the existing site conditions, generating no adverse impacts on adjoining properties.
6. The proposed development will not alter the residential capacity of the site.
7. The proposed conventional land Torrens Title Subdivision removes the management burden of a strata scheme, that serves no benefit for 2 freestanding detached dwellings.
8. Following subdivision, the 2 lots can be can function separately and be managed independently without the need for an Owners Corporation, removing the burden of a strata scheme that provides no positive effects on the property owners.
9. Conversion from strata title to conventional land Torrens Title Subdivision will allow existing and future owners freedom of choice on lots and dwellings with proven suitability for residential purposes.
10. The proposed subdivision pattern matches the existing strata boundaries and is consistent with the adjoining subdivision pattern in the area. The proposed subdivision pattern will not adversely impact other landowners in the area.
11. The change in area from the 600 m² development standard does not undermine the underlying objectives of the R2 Low Density Residential zone to provide for the housing needs of the community within a low density residential environment.
12. No physical change is proposed as a result of this application to vary the subdivision tenure from strata to conventional land Torrens Title Subdivision. Conversion of the existing strata subdivision to a conventional land Torrens Title Subdivision maintains the as-built status quo.
13. Subdivision replicates what is already in in existence on the ground and simply changes the titling system utilised to define ownership on paper. The shape and size of lots correspond with existing lot layout. Lots are limited by existing dwellings, driveways and services. All site constraints have been considered in defining the proposed boundary locations.

14. No additional dwelling entitlements are created by the boundary adjustment. The opportunity to create a conventional land Torrens Title subdivision, reflecting the current built form, with independent ownership of each lot is considered a desirable outcome.
15. The variation to the minimum lot size standard is considered inconsequential relative to the benefit of correcting a superseded Strata Plan and providing a legal and viable subdivision alternative with independent housing choice.
16. The underlying objectives or purpose of the standard to provide land at a density that is appropriate for site constraints has been demonstrated by the existence of established long-standing dwellings on each of the lots which are of sufficient size to accommodate development.
17. The underlying objectives or purpose would be defeated or thwarted if compliance was required, as strict compliance with the development standard would result in a missed opportunity to create independent living with each registered proprietor responsible for decisions pertaining to their own property. Therefore, compliance is unreasonable.
18. There is no public benefit in maintaining the 600 m² minimum lot size development standard as both lots already have an existing approved dwelling and no additional dwelling entitlements will arise from the termination of the existing strata and conversion to conventional land Subdivision. Varying the development standard will not compromise the development form envisaged by the planning controls adopted by Council.
19. The development standard has effectively been annulled by Council as prior approvals have granted consent for construction of buildings and the subdivision thereof, creating lots less than 600 m².

Thus, compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

4. ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD.

Justification of contravening the development standard specified in Clause 4.6(3)(b) of HLEP on the grounds of sufficient environmental planning considerations, are itemised below:

1. Approval of existing dwellings on each of the lots demonstrates compliance with environmental planning controls such as access for light and air, open space areas, carparking, traffic movement enabling vehicle ingress and egress and a forward direction, provision for landscaping, private and public amenity, streetscape, building form, height and setbacks.

Each of these residential design guidelines have been considered by Council and approved with prior development consents. The conversion of subdivision tenure proposed by this application will not result in any physical construction works or corresponding environmental impact.

2. Subdivision density is not changing. It is only the title tenure system that requires amendment because the existing Strata Plan no longer reflects buildings approved and constructed on the site. No amendment to Development potential, site constraints and infrastructure capacity are required.
3. Long-standing, existing functioning dwellings are evidence that lots are of sufficient size to accommodate development. Adequate site area, solar access, open space, parking, vehicular access and site amenity exist on the site and were addressed with prior approvals for construction of dwellings on the site. No changes are sought as a consequence of this application.
4. Areas of each of the proposed lots correspond to the existing approved lots (see table in attached statement of environmental effects).
5. Contravention of the development standard does not raise any matter of significance for State or regional environmental planning. The existing and proposed development form part of infill development in an established residential precinct, with no potential for impact outside the immediate vicinity of the site. Thus, no matters of significance for State or regional environmental planning exist.
6. Both existing lots are already smaller than the minimum lot size requirements under the R2-low density residential zoning. The dual occupancy use, comprising freestanding single dwellings on each lot and the subsequent strata subdivision was approved prior to the gazettal of the Hornsby Local Environmental Plan (LEP) on 11/10/2013.

Under clause 4.65 (b) of The Environmental Planning and Assessment Act 1979 “the use of the building, work or land... for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use”, affords existing use rights. Thus, converting the existing strata subdivision to a conventional land Torrens Title Subdivision maintains the status quo and utilises existing use rights.

7. Both strata title and conventional land Subdivision are governed by the Torrens Title system where the state guarantees title. Thus, as the land is already subdivided the right to subdivide exists. Albeit a different tenure within the same Torrens Title system.

Furthermore, the proposed works are in line with the objectives of the Environmental Planning and Assessment Act 1979 (EPA). Clause 1.3 of the EPA states:

The objects of this Act are as follows—

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,

- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The proposal satisfies these planning objectives in accordance with the corresponding itemised responses:

- a) The proposal maintains the social and economic welfare of the community and the established landscaped precinct allowing for the proper management, development and conservation of the state's natural resources. The development will continue to present aesthetically and provide economic benefits derived from the removal of an unnecessary and superseded strata it is creating a burden on property owners.
- b) Integration of economic, environmental and social considerations by varying the development standard will facilitate ecologically sustainable development with 30 years of established landscape and built form. Proven ecologically sustainable development principles have been adopted by in the design of the development. No physical works are proposed.
- c) The proposal provides orderly and economic use and development of the land removing a redundant Strata Plan and providing independent ownership of property. The development has proven over a 30 year period to operate sustainability and suitability with 2 dwellings on site. The proposed subdivision replicates the existing strata boundary alignment creating 2 lots with the same effective area as the parent Strata plan (See area summary table in Statement of Environmental Effects).
- d) The smaller land size increases affordability, thus promoting the maintenance of affordable housing.
- e) The proposed development maintains the established built and landscaped environment providing habitats for birds, plants and animals. No physical works are proposed as part of this development. The proposal will not impact on the conservation of threatened species of native animals and plants, ecological communities and their habitats.
- f) No built forms pertaining to cultural or aboriginal heritage exist on the site. Thus, no impact on heritage significant structures or heritage conservation areas results from the development.
- g) The proposed development replicates established built form incorporating good design and established vegetation, maintaining the amenity of the built environment.

- h) The proposal maintains the existing approved built forms. No works are proposed as part of this development; thus, the proposal will not impact on built form.
- i) The development requires Council consent, thus promoting the sharing of responsibility for environmental planning and assessment between different levels of government in the state.
- j) The proposal has been advertised providing opportunity for community participation in the environmental planning and assessment process.

Thus, there are sufficient environmental planning controls satisfied specifically by the development on this site to justify the proposed departure from the development standard.

5. CONSISTENCY WITH THE OBJECTIVES OF THE ZONE AND OF THE STANDARD.

5.1 Objectives of the R2 Low Density Residential

The objectives of the **R2 Low Density Residential zone** are:

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

The development is consistent with objective a), as the land is zoned and utilised as residential land providing housing needs for the community within a low density residential environment. The site is a managed residential precinct, consisting of 2 free standing, fully serviced, functioning dwellings, landscaped open space and driveway with established and recent vegetation.

As no works are proposed, the development remains consistent with the existing approved density of the site.

The development is consistent with objective b), as existing community facilities including parks, shops, walking trails, transportation infrastructure, schools and restaurants are located within close proximity to the development. Occupants of this development participate in facilitating demand for and use of established facilities and services required to meet the day to day needs of residents.

5.2 Objectives of the minimum subdivision lot size Standard

Clause 4.1 of Hornsby Local Environmental Plan 2013 specifies minimum lot size objectives as:

- (1) The objectives of this clause are as follows—

(a) to provide for the subdivision of land at a density that is appropriate for the site constraints, development potential and infrastructure capacity of the land,

(b) to ensure that lots are of a sufficient size to accommodate development.

Objective a) is satisfied as the proposed conventional land Torrens Title Subdivision has been designed with appropriate regard to site constraints, existing built form and established service infrastructure. The development incorporates site constraints and the capacity of the land, providing lots at a density appropriate for the site. The existing dwellings reflect the development potential of the site and are proposed to be retained as part of this development. The existing built form will continue to function effectively as separate dwelling houses into the future.

Subdivision density is not changing. It is only the title tenure system that requires amendment. Arising because the existing Strata Plan no longer reflects buildings approved and constructed on the site. No amendment to Development potential, site constraints and infrastructure capacity are requested as part of this application.

The variation to the minimum lot size standard is considered inconsequential relative to the benefit of correcting a superseded Strata Plan and providing a legal and viable subdivision alternative with independent housing choice.

Objective b) is satisfied as lots have a proven functional 30 year history of accommodating development. No change in lot area is proposed and the conventional land subdivision boundaries will replicate the primary strata boundaries with reciprocal rights of access and easement for services over the shared driveway.

Adequate site area, solar access, open space, parking, vehicular access and site amenity exist on the site and were addressed with prior approvals for construction of dwellings on the site. The existing functioning dwellings are evidence that lots are of sufficient size to accommodate development. No changes are sought as a consequence of this application.

5.3 Further considerations for clause 4.6 exceptions to development standards

Public interest

There is no public benefit in maintaining the 600 m² minimum lot size development standard as both lots already have an existing approved dwelling and no additional dwelling entitlements will arise from the termination of the existing strata and conversion to conventional land Subdivision. As there is no physical change proposed as a consequence of development, there are no adverse impacts created in relation to the public benefit by varying the development standard. Varying the development standard will not compromise the development form envisaged by the planning controls adopted by Council.

Planning secretary concurrence

Contravention of the development standard does not raise any matter of significance for State or regional environmental planning. The existing and proposed development form

part of a small scale infill development in an established residential precinct, with no potential for impact outside the immediate vicinity of the site. Thus, no matters of significance for State or regional environmental planning exist.

6. CONCLUSION.

The proposed boundary adjustment subdivision creates 2 undersized lots from 2 existing undersized lots. Existing and proposed lots are less than the 600 m² standard. The proposed boundary adjustment relies upon the provisions of clause 4.6 of the LEP that provides an appropriate degree of flexibility in applying the 600 m² minimum lot size development standard to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

No change in area results from the boundary adjustment. There will be no physical impacts arising from the boundary adjustment, strata termination and conversion to Conventional Land Torrens Title Subdivision. The conventional subdivision replicates what is already in existence on the ground and simply changes the titling system utilised to define ownership on paper.

The underlying objectives or purpose of the standard to provide land at a density that is appropriate for site constraints has been demonstrated by the existence of established long-standing dwellings on each of the lots which are of sufficient size to accommodate development.

The merit-based justification in this request provides strong evidence that the proposed lot size variation will have clear positive outcomes correcting a superseded Strata Plan and providing independent living for registered proprietors. The variation to the lot size standard is inconsequential in the scheme of the overall residential viability of the site.

I request exception to 600 m² minimum lot size development standard as the development standard is unreasonable or unnecessary in the circumstances of this case and there are sufficient environmental planning controls satisfied specifically by the development on this site to justify the proposed departure from the development standard.

Yours Faithfully

BARRY HUNT ASSOCIATES



M.A. Rolls

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