



# Minto Planning Services

Town Planning Consultants

## **Clause 4.6 - Exceptions to Development Standards - Minimum Allotment Size Two Lot Subdivision & New Dwellings 82 Boronia Place, Cheltenham**

### Introduction

The proposal seeks approval for a Torrens title subdivision so as to create two allotments in accordance with the Draft Subdivision Plan prepared by SurveyPlus.

The proposal is subject to a minimum allotment size of 600m<sup>2</sup> per allotment.

The proposal provides for one lot (Proposed Lot 1) which is to have an area of 577m<sup>2</sup> and one lot (Proposed Lot 2) which is to have an area of 574.5m<sup>2</sup>. The proposed lot sizes for Lot 1 & Lot 2 do not comply with the minimum allotment size requirements of Clause 4.1 of the LEP. Proposed Lot 1 results in shortfall of 23m<sup>2</sup> or 3.8% and Proposed Lot 2 results in a shortfall of 25.5m<sup>2</sup> or 4.25%.

It is submitted that the minimum allotment size requirement as required by Clause 4.1 of the LEP is a development standard as defined and that any variation of its requirements requires the preparation of a submission pursuant to Clause 4.6 of the LEP.

This Clause 4.6 variation has been prepared in accordance with recent judgments of the Land & Environment Court.

It is submitted that the variation is well founded and is worthy of the support of the Council.

The following assessment of the proposed variation against the requirements of Clause 4.6 is therefore provided.

- 1. What are the objectives of Clause 4.6 and is the proposal consistent with them.**

The objectives of Clause 4.6 of the LEP are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

It is my opinion, as is demonstrated by the responses to the questions below, that the proposed variation is consistent with the objectives of this clause in that through the application of flexibility as to the required allotment size that an additional dwelling house allotment can be created and a dwelling constructed.

It is submitted that in relation to achieving a better outcome that this is achieved by applying flexibility so as to allow for a site with an area of 1,151.8m<sup>2</sup> and having two street frontages to be subdivided in conjunction with integrated dwelling designs.

**2. Is the standard to be varied a Development Standard to which Clause 4.6 applies.**

Clause 4.1 is contained within Part 4 of the Hornsby LEP 2013 and which is titled Principal Development Standards. Clause 4.1 states that:

*4.1 Minimum subdivision lot size*

- (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.**
- (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.*
- (3A) 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) This clause does not apply in relation to the subdivision of any land:
  - (a) by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or*
  - (b) by any kind of subdivision under the Community Land Development Act 1989.**

It is considered that the wording of the Clause is consistent with previous decisions of the Land & Environment Court of NSW in relation to matters which constitute development standards.

It is also noted that Clause 4.1 does not contain a provision which specifically excludes the application of Clause 4.6.

On this basis it is considered that Clause 4.1 is a development standard for which Clause 4.6 applies.

**3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case**

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out five justifications to demonstrate that compliance with a development standard is unreasonable or unnecessary. These include:

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

It is my opinion that the first reason is relevant in this instance in that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The following assessment is provided against the objectives of Clause 4.1 of the LEP:

- (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,*

It is my opinion based upon the content of this report and the supporting documentation that the proposed subdivision is 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.*

It is my opinion based upon the architectural plans forming part of this application, that the proposed allotments are of sufficient size so as to support development which otherwise complies with the requirements of the Council.

In addition to the above it is submitted that:

- The proposed subdivision will provide for the provision of an additional parcel of land capable of supporting an additional dwelling as demonstrated by the proposed dwelling designs and which are considered to be commensurate with dwellings in the locality and the surrounding character.
- The non-compliance is considered minor given that Proposed Lot 1 results in shortfall of 23m<sup>2</sup> or 3.8% and Proposed Lot 2 results in a shortfall of 25.5m<sup>2</sup> or 4.25%.
- The subject land has an area of 1,151.8m<sup>2</sup> with the existing surrounding properties comprising a variety of allotment shapes and sizes and which are typically significantly smaller than the subject site.
- The subject site is located within a locality which includes a number of allotments having an area of less than 600m<sup>2</sup>. Such allotments exist at 30D Castle Howard Road (452m<sup>2</sup>), 20A Lyne Road (469m<sup>2</sup>), 22 Lyne Road (509m<sup>2</sup>), 17A Lyne Road (497m<sup>2</sup>), 1C Redmill Close (432m<sup>2</sup>), 1D Redmill Close (447m<sup>2</sup>), 1B Redmill Close (488m<sup>2</sup>), 25 Old Beecroft Road (463m<sup>2</sup>), 25A Old Beecroft Road (510m<sup>2</sup>), 31 Old Beecroft Road (471m<sup>2</sup>), 33 Old Beecroft Road (456m<sup>2</sup>), 39,41,43 Sutherland Road (under 600m<sup>2</sup>), 20 Old Beecroft Road (363m<sup>2</sup>), 20 Old Beecroft Road (363m<sup>2</sup>), 20A Old Beecroft Road (542m<sup>2</sup>), 28A Old Beecroft Road (315m<sup>2</sup>).
- The proposed subdivision as a result of the proposed lot sizes and two street frontages is considered to result in development which is consistent with the prevailing subdivision pattern of the locality.
- The subject land having two street frontages is clearly suited to subdivision into two parcels of land having lot sizes that better reflect the surrounding subdivision pattern.
- The proposed allotments are both considered capable of supporting development as demonstrated by the architectural plans which comply with the requirements of the Council for a dwelling house.
- Each of the allotments resulting from the proposed subdivision is capable of being provided with vehicular access in accordance with the requirements of Council and the applicable Australian Standards.
- The proposed subdivision will not in my opinion result in any unreasonable impacts upon adjoining properties or the streetscape.

On this basis it is my opinion that strict compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

**4. Are there sufficient environmental planning grounds to justify contravening the development standard.**

It is considered that a contravention of the development standard is justified on environmental planning grounds given that:

- The proposal will provide for the orderly and economic development of land through the creation of an additional parcel of land which will increase housing supply within the locality.
- The subject land has an area of 1,151.8m<sup>2</sup> which is larger than the area of adjoining and nearby allotments.
- The subject land as a result of its lot size and two street frontages is inconsistent with the dominant subdivision pattern of the locality.
- The subject land having two street frontages is clearly suited to subdivision into two parcels of land having lot sizes that better reflect the surrounding subdivision pattern.
- The subdivision will allow for the retention of all significant trees located upon the site.
- The proposed allotments are both considered capable of supporting development as demonstrated by the architectural plans which comply with the requirements of the Council for a dwelling house.

**5. Is the proposed development 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.**

The proposed development is in my opinion in the public interest because it is compliant with the zone objectives and the objectives of the particular standard.

In this regard the proposal is considered to be consistent with the relevant objectives of the R2 - Low Density zone as detailed below.

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

Comment

The proposal will in my opinion provide for an additional allotment which is ultimately capable of supporting a dwelling house consistent

with the requirements of the Council for a low density residential environment.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment

Not applicable.

In relation to the objectives of Clause 4.1 of the LEP the following assessment is provided:

- (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,*

Comment

It is considered as demonstrated by the accompanying architectural plans that the proposed Lot 1 & Lot 2 are capable of providing for a development outcome which is otherwise consistent with the requirements of the Council.

It is also not considered that there are any site constraints or the like which would warrant a larger (compliant) allotment size noting that the accompanying architectural plans demonstrate that the new dwellings proposed on Lot 1 & Lot 2 will continue to support a significant number of mature trees.

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

Comment

As detailed above it is my opinion that proposed Lot 1 & Lot 2 are capable of supporting future development which complies with the requirements of the Council notwithstanding the non-compliance with the minimum allotment size requirement.

The proposal therefore in my opinion is consistent with the applicable objectives of both Clause 4.1 of the LEP and the R2 - Low Density Residential Zone.

**6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.**

It is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning.

**7. What is the public benefit of maintaining the development standard.**

It is my opinion that there is no public benefit in maintaining the development standard in this instance given the absence of any unreasonable detrimental impacts and the public benefit that arises from the provision of one additional allotment.

**Conclusion**

It is therefore my opinion based upon the content of this submission that a variation of the minimum allotment size requirement for proposed Lot 1 and Lot 2 as required by Clause 4.1 of the Hornsby Local Environmental Plan 2013 is appropriate in this instance.

Andrew Minto  
Graduate Diploma (Urban & Regional Planning), Associate Diploma (Health & Building Surveying). MPIA.  
MINTO PLANNING SERVICES PTY LTD  
June 2022