



# ATTACHMENTS

## LOCAL PLANNING PANEL MEETING

Wednesday 28 September 2022  
at 4:00pm



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**ATTACHMENT/S**

**REPORT NO. LPP52/22**

**ITEM 1**

- 1. LOCALITY PLAN**
- 2. CLAUSE 4.6**
- 3. SURVEY PLAN**
- 4. SUBDIVISION & ARCHITECTURAL PLANS**
- 5. LANDSCAPE PLAN**





**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.*

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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.

*Minto Planning Services P/L*

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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.

































































**ATTACHMENT/S**

**REPORT NO. LPP54/22**

**ITEM 2**

- 1. LOCALITY PLAN**
- 2. ARCHITECTURAL PLANS**
- 3. SHADOW DIAGRAMS**



































