

Clause 4.6 - Exceptions to Development Standards
Clause 4.1 - Minimum Allotment Size
1 Bibbenluke Avenue, Duffy's Forest

The proposed Torrens title subdivision of one lot into two results in a non-compliance with the minimum allotment size controls as required by Clause 4.1 of the Warringah Local Environmental Plan 2011.

The proposal is to provide for the following lot sizes:

Lot 1 - 1.16 ha
Lot 2 - 6,772m²

The proposed lot sizes for Lots 1 and 2 do not comply with the minimum allotment size requirements of Clause 4.1 of the LEP and which requires a minimum allotment size of 2ha per allotment.

Given that the proposal does not comply with the minimum subdivision lot size and in order for consent to be granted to the proposal a variation pursuant to Clause 4.6 of the LEP is required.

This Clause 4.6 variation has been prepared having regard to the recent decisions 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 is an assessment of the proposed variation against the requirements of Clause 4.6.

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.

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 LEP and which is titled Principal Development Standards. It is also 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.

It is my opinion that compliance with the requirements of Clause 4.1 is both unreasonable and unnecessary in the circumstances of this case for the following reasons:

- Each dwelling is provided with a frontage to a separate street.
- The property currently supports the existing dwelling structures.
- The proposed non-compliance will not in my opinion result in any amenity impacts upon adjoining properties including unreasonable overshadowing or a loss of privacy.
- The proposal in my opinion will not result in any unreasonable visual impacts upon either adjoining properties or the streetscape as a result of the non-compliance.
- The proposal will not result in an intensification of the use of land.
- The proposal will facilitate the removal of a land use (animal boarding establishment) which is typically the subject of complaint and its replacement with a more sympathetic land use (residential).

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 in this instance on environmental planning grounds given that the existing animal boarding establishment use is generally regarded as an unsympathetic land use relative to its neighbours. The proposed Torrens title subdivision will provide the owners of the site with sufficient financial incentive to cease the existing animal boarding establishment use and to provide for a more suitable land use (residential) upon the site.

Absent the proposed subdivision the existing animal boarding establishment use will remain.

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 will provide a financial incentive for the owners to cease the existing animal boarding establishment use. The proposed change of use to a dwelling will make a positive contribution to the locality in a manner which is otherwise compliant with the requirements of the LEP, the applicable zone objectives and the objectives of the particular standard.

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

- (a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,*

Comment

The area surrounding the subject site comprises of a subdivision pattern which contains a varying range of allotment shapes.

In relation to allotment sizes whilst it is agreed that the majority of allotments satisfy the minimum 2ha requirement, it is noted that there are examples of smaller allotments comparable in size with the proposal.



An aerial view of the surrounding area and subdivision pattern

- (b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,*

Comment

Notwithstanding the proposed allotment sizes it is considered that the allotments could be used for a range of permissible uses.

- (c) to protect the integrity of land holding patterns in rural localities against fragmentation,*

Comment

Given that the subject site has two street frontages and that each dwelling will present to a separate street frontage that the proposal will not result in fragmentation.

- (d) to achieve low intensity of land use in localities of environmental significance,*

Comment

It is considered that the intended use of each allotment for residential purposes is considered to provide for a low intensity use of land.

- (e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,*

Comment

Based upon the accompanying Bushfire Assessment Report it is considered that there will not be any unreasonable bushfire impacts resulting from the proposed subdivision and residential use.

- (f) to protect and enhance existing remnant bushland,*

Comment

The proposal will not result in any impacts upon remnant bushland.

- (g) to retain and protect existing significant natural landscape features,*

Comment

The proposal will not impact upon any significant natural landscape features.

(h) to manage biodiversity,

Comment

It is not considered that there are any biodiversity issues associated with the subject site.

(i) to provide for appropriate stormwater management and sewer infrastructure.

Comment

All stormwater and wastewater associated with the proposal and the existing/proposed dwellings will be disposed of on-site utilising the existing stormwater and wastewater disposal systems.

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 proposed subdivision incorporates existing structures and the absence of any unreasonable detrimental impacts.

It is also considered that the proposal will allow for the replacement of the existing animal boarding establishment use with a use (residential)) more suitable for the site and locality.

Conclusion

It is therefore my opinion based upon the content of this submission that a variation of the minimum lot size requirements of Clause 4.1 of the Warringah LEP 2011 is appropriate in this instance.

Andrew Minto
Graduate Diploma (Urban & Regional Planning), Associate Diploma (Health & Building Surveying). MPIA.
MINTO PLANNING SERVICES PTY LTD
November 2020