

Request to vary a development standard

Request to vary clause 4.1 in Dungog LEP 2014

Address:

95 Lomandra Circuit, Paterson NSW 2421

Date: 23/09/2025

Site and proposed development

1. Describe the site.

The site is located the western side of Lomandra Circuit, which forms a loop road with Brisbane Circuit and which connects to Martins Creek Road, between the townships of Paterson and Martins Creek.

The site is improved with a main residence built four years ago and a large 12 x 8 metre shed. The shed is used for parking, storage and as a home office. Water storage tanks are also located on the property adjacent to these buildings.

A survey of the site showing the property, existing buildings and relevant levels (RLs to AHD) is provided as **Appendix A** of the Statement of Environmental Effects (SoEE).

The rear of the site adjoins the North Coast railway line that connects Paterson with Maitland to the south. Surrounding development is predominantly low density residential development including detached housing on rural-residential allotments.

2. Describe the proposed development.

The proposed development is for the subdivision of the existing 22,570m² (approx) site, being Lot 14 DP 1177675, into two Torrens title lots. The proposed subdivision plan is provided as **Appendix B** of the SoEE.

The proposed lots will be as follows:

- Lot 142 – 1.535 hectares with a frontage of 108.55m to Lomandra Circuit

This lot will contain the existing dwelling and shed and the water tanks adjacent to these buildings. The existing vehicle access from Lomandra Circuit to the dwelling and shed will be retained and located within this lot.

- Lot 141 – 7,220m² with a frontage of 34.715m to Lomandra Circuit

This lot will be a vacant lot and a proposed 20m by 20m building envelope is shown on this lot suitable for the construction of a future dwelling.

Planning instrument, development standard and proposed variation

3. What is the environmental planning instrument/s you are seeking to vary?

Dungog Local Environmental Plan 2014

4. What is the site's zoning?

The subject site is zoned Zone R5 - Large Lot Residential

5. Identify the development standard to be varied.

Please identify the name of the development standard being varied (for example, minimum lot size, floor space ratio, height of building), its relevant environmental planning instrument clause and the objectives of the development standard.

Clause 4.1: Minimum subdivision lot size

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

- (a) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,
- (b) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,
- (c) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls,
- (d) to ensure that lot sizes and dimensions allow dwellings to be sited to protect natural features and retain special features such as trees and views,
- (e) to protect and enhance waterways by restricting the creation of new riparian rights through subdivision so as to prevent increased direct access onto rivers.

6. Identify the type of development standard.

Please identify if the development standard you are seeking to vary is numeric or non-numeric. For more guidance, see Part A, Chapter 1.3 of this guide.

The definition of “development standard” at clause 1.4 of the EP&A Act includes:

- “(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,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (e) the intensity or density of the use of any land, building or work,”*

Response:

As Clause 4.1 of the LEP prescribes a provision which seeks to control the area of land to be subdivided, and accordingly this requirement qualifies as a numerical development standard.

7. What is the numeric value of the development standard in the environmental planning instrument?

This should be specific and address all non-compliance. Please see the relevant environmental planning instrument to determine the numeric value of the development standard for your site.

Clause 4.1 specifies a minimum lot size and the minimum area mapped for the subject site is 8,000m².

8. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

For example: The proposal exceeds the maximum _____ development standard by _____, which is a percentage variation of ____%.

Proposed Lot 142 at 1.535 hectares complies with the minimum lot size under this clause.

Proposed Lot 141 at 7,220m², is 780m² under this minimum lot size and does not comply with the development standard. This is a variation of 9.75% (i.e. 780m²/8000m²)

9. Visual representation of the proposed variation (if relevant)

If relevant, provide a diagram or image showing the proposed variation.

Please refer to the proposed subdivision plan provided as **Appendix B** of the SoEE.

Justification for the proposed variation

10. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

There are 5 common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary (items a to e). An applicant must satisfy at least one. This list is not exhaustive – there may be other ways available.

a) Are the objectives of the development standard achieved notwithstanding the non-compliance? *(Give details if applicable)*

Response:

- It is considered that the proposal is consistent with the objective of the minimum subdivision lot size development standard, as specified in clause 4.1(1) for the following reasons:
 - The established pattern of subdivision is for large lot residential properties, the majority of which have direct frontage to Lomandra Circuit. This proposed subdivision is consistent with that pattern in that each of the lots will be provided with frontage with direct access to this public road.
 - It is noted that a number of other approvals have been given the subdivision of lots within the original rural residential subdivision, namely:
 - DA 105/2023, 42-54 Lomandra Circuit – approved 24 November 2023
 - DA 225/2022, 51 Lomandra Circuit – approved 12 April 2023
 - DA 53/2021, 120 Lomandra – approved 1 December 2021
 - As with the proposed subdivision of the subject site, these other subdivisions approvals of one into two torrens lots have not compromised the subdivision pattern of the area. Further it is noted that the subdivision of 42-54 Lomandra Circuit included one lot below the minimum 8,000m² lot size.
 - The existing lot is of sufficient size to allow for a subdivision into two separate lots. However, achieving 2 lots which meet the minimum 8,000m² lot size is restricted due to existing development on the land.
 - The subsequent subdivision of the site into two Torrens lots, one to contain the existing dwelling, and the balance to be developed with another potential dwelling in compliance with the Dungog LEP and DCP.
 - The creation of a separate Torrens lot would not infer any additional development 'rights' for the land, and it is noted that at 15,350m² the lot containing the existing dwelling would not be suitable for another dwelling or for further subdivision.
 - The development will ensure all essential services and safe, legal and practical access is provided for the resulting lots and their respective dwellings.
 - There is no impact on nearby waterways or other natural features, natural resources, biodiversity or habitats in the vicinity of the site.

b) Are the underlying objectives or purpose of the development standard not relevant to the development? *(Give details if applicable)*

Response:

- The underlying objectives are relevant however the proposed 'undersized lot' does not compromise the objectives or purposes as the subdivision is based on the location of existing development, and the subdivision does not create additional development opportunities that otherwise do not currently exist.

c) Would the underlying objective or purpose be defeated or thwarted if compliance was required? *(Give details if applicable)*

Response:

- The existing development on the subject site compromises achieving compliance with the standards with a regular subdivision of the site. A subdivision of the land contrived to comply would serve no planning purpose and would leave a large area of land to the rear of the existing dwelling which would compromise privacy between the development on the existing site and future development on the undersized lot.

d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard? *(Give details if applicable)*

Response:

- The development standard has been recently varied in respect of DA 105/2023, 42-54 Lomandra Circuit – subdivision of 1 into two torrens lots approved 24 November 2023. This approval was justified on the same basis as that proposed in the subject application, in that it did not create an additional number lots that could not otherwise

e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary? *(Give details if applicable)*

Response:

- The zoning of the land and the applicable minimum lot size development standard is appropriate. However it is also appropriate to consider a minor variation of the standard for the reason submitted above.

11. Are there sufficient environmental planning grounds to justify contravening the development standard?

Note: Environmental planning grounds are matters that relate to the subject matter, scope and purpose of the EP&A Act including the Act's objects (see Part A, Chapter 2.6 of this guide). They must relate to the aspect of the proposed development that contravenes the development standard and not simply promote the benefits of the development as a whole. You must provide substantive justification as to why the contravening the development standard is acceptable.

Response:

- The objectives of the minimum lot size control and the objectives of the R5- Large Lot Residential Zone are included above. In this regard, and in relation to the actual environmental planning impacts of the proposed Torrens subdivision, it is submitted that:
- The land is of sufficient size to allow for a subdivision into two separate lots. However, achieving 2 lots which meet the minimum 8,000m² lot size is restricted due to existing development on the land.
 - An irregular shaped lot which complies with the 8,000 m² minimum lot size requirement could be contrived by including a larger area of land subject to the railway acoustic buffer within Lot 141. However, this would serve no practical purpose and would compromise the ability to private suitable private rear yards for the development on both lots.
 - The creation of a separate Torrens lot would not infer any additional development 'rights' for the land, and it is noted that at 15,350m² the lot containing the existing dwelling would not be suitable for another dwelling or for further subdivision.
 - The established pattern of subdivision is for large lot residential properties, the majority of which have direct frontage to Lomandra Circuit. This proposed subdivision is consistent with that pattern in that each of the lots will be provided with frontage with direct access to this public road.
 - Lot 141 is of a suitable size to accommodate future development of a detached residential development in compliance with the requirements of the Dungog LEP and DCP and specifically in accordance with the required setbacks as envisaged by the Council DCP for a site of this size.
 - The development will ensure all essential services and safe, legal and practical access is provided for the resulting lots and their respective dwellings.
 - There is no impact on nearby waterways or other natural features, natural resources, biodiversity or habitats in the vicinity of the site.

As outlined above, on the basis of the above, it is considered that there are sufficient environmental planning grounds to justify the contravention of the development standard.

12. Is there any other relevant information relating to justifying a variation of the development standard? (If required)

Please provide any other information that you feel is relevant in justifying your proposed variation to the development standard.

No additional Matters