
Clause 4.6

Variation Report

Minimum Lot Size
1-into-3 Lot Subdivision



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Introduction

This Clause 4.6 Variation Report (Report) has been prepared to accompany the Development Application (DA) for the 1-into-3 Lot Subdivision at 24 Horns Crossing Road, Vacy NSW 2421. The aim of this Report is to request that Council consider the granting for the development even though the development, in part, would contravene a development standard imposed by the Dungog Local Environmental Plan 2014 (LEP).

This Report will demonstrate that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- there are sufficient environmental planning grounds to justify the contravention of the development standard.

Applicant

Alva Planning has been authorised to lodge this Clause 4.6 Variation Report to Council with the consent of the landowner, TJ and AJ Pty Ltd.

Site Details

Property Address	24 Horns Crossing Road, Vacy NSW 2421
Lot/Section/Deposit Plan	Lot: 2, Sec: -, DP: 710263
Zone	R5 – Large Lot Residential
Property Size	23,395m ²
Property Constraints	Bushfire Prone Land
Consent Authority	Dungog Shire Council





Figure 1: Site Location (SixMaps, December 2024)

Proposed Development

1-into-3 Lot Subdivision

The subdivision of the existing lot from 1-into-3 Lots as follows:

- Lot 1 – 8,000m² (compliant)
- Lot 2 – 8,000m² (compliant)
- Lot 3 – 7,395m² (non-compliant)

The proposed lot layout is shown in the plan below, and this document will address further requirements in relation to the subdivision.

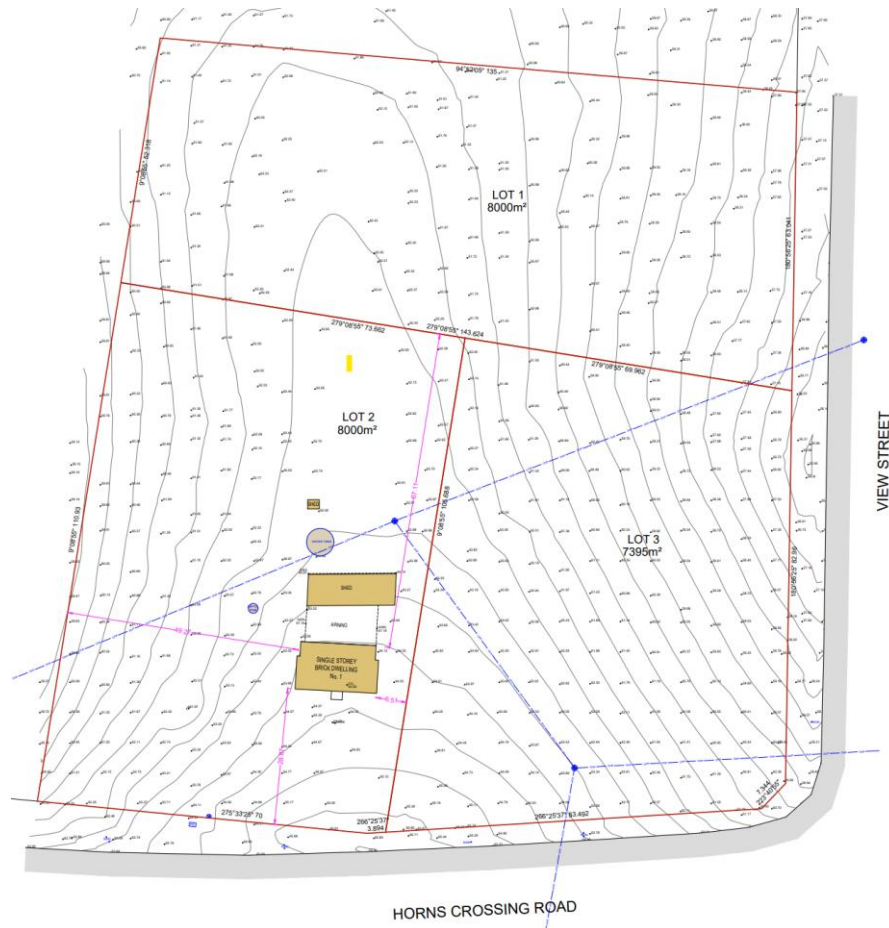


Figure 2: Proposed Lot Layout

Clause 4.6 – Exceptions to Development Standards

This request to vary a development standard has been prepared in accordance with the provisions of Clause 4.6 - Exceptions to Development Standards. The request seeks a variation to the Minimum subdivision lot size development standards adopted under clause 4.1 of the Dungog Local Environmental Plan 2014 (LEP). The LEP includes a minimum lot size map, which overlays different minimum lot size requirements for land throughout the Local Government Area (LGA). A minimum lot size of 8,000m² applies to the site.

Clause 4.1 (3) states:

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.

The objectives of Clause 4.6 are:

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

Clause 4.6(6) also provides guidance around limitations in the variation of minimum subdivision lot size for Zone R5 Large Lot Residential land, stating that development consent must not be granted under this clause for a subdivision if:

- a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

The extent of the proposed variation to the proposed Lot 3 is outlined in the table below:

Development Standard	Minimum Lot Size	Proposed Lot Size	Proposed Variation	Extent of Variation
Clause 4.1 Minimum Subdivision Lot Size	8,000m ²	7,395m ²	605m ²	7.5%

With regard to Clause 4.6(6):

- a) The subdivision WILL NOT result in 2 or more lots of less than the minimum area specified for such lots by the development standard, or
- b) The subdivision WILL NOT result in at least one lot that is less than 90% of the minimum area specified for such a lot by the development standard. The single lot proposed less than the minimum area specified is 92.5% of the minimum area specified.

Objectives of the Zone

Objectives	Comment
<ul style="list-style-type: none"> To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality. To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future. To ensure that development in the area does not unreasonably increase the demand for public services or public facilities. To minimise conflict between land uses within this zone and land uses within adjoining zones. To isolate housing from existing intensive agriculture or future intensive agricultural areas. 	<p>The proposal strongly aligns with the objectives as listed in the Zone R5 land use table in that it directly responds to each of the objectives, providing opportunity for housing in a rural setting, maximizing the land use in the context of the surrounding area, and not resulting in unreasonable impact to the public domain.</p>

Objectives of the Development Standard

Objectives	Comment
<ul style="list-style-type: none"> 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 	<p>The proposed subdivision, inclusive of the single lot proposed less than the minimum area specified is reflective of the predominant subdivision pattern of the area, with reference to View Street and Wakaya Close, and reinforced this pattern for future development of the area.</p> <p>The proposal has been designed in such a way to minimise any likely impact of the subdivision, and future single residential development, on the amenity of neighbouring properties, with lot</p>

<p>features and retain special features such as trees and views,</p>	<p>sizes and dimensions certainly capable of facilitating compliance of future dwelling's with development controls, and not encouraging over-densification of the land.</p> <p>The existing lot features minimal significant natural features in terms of trees and native vegetation, which have sufficient scope for retention. With regard to views and vistas, the contour of the land allows for the siting of dwellings to capture these features, while also retaining these for neighbouring dwellings.</p>
<p>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.</p>	<p>Not Applicable</p>

Clause 4.6(3)(a) – How is strict compliance with the development standard unreasonable or unnecessary in this particular case

It is considered that strict compliance with the minimum subdivision lot size development standard is unreasonable or unnecessary in this circumstance for the following reasons:

- Compliance with the objectives will be achieved notwithstanding the non-compliance with the numerical standard in that, the proposed subdivision, inclusive of the single lot proposed less than the minimum area specified is reflective of the predominant subdivision pattern of the area, with reference to View Street and Wakaya Close, and reinforced this pattern for future development of the area.

The proposal has been designed in such a way to minimise any likely impact of the subdivision, and future single residential development, on the amenity of neighbouring properties, with lot sizes and dimensions certainly capable of facilitating compliance of future dwelling's with development controls, and not encouraging over-densification of the land.

The existing lot features minimal significant natural features in terms of trees and native vegetation, which have sufficient scope for retention. With regard to views and vistas, the contour of the land allows for the siting of dwellings to capture these features, while also retaining these for neighbouring dwellings.

- The proposal strongly aligns with the objectives as listed in the Zone R5 land use table in that it directly responds to each of the objectives, providing opportunity for housing in a rural setting, maximizing the land use in the context of the surrounding area, and not resulting in unreasonable impact to the public domain.
- Clause 4.6(6) of the LEP provides scope for variation in instances such as this, stating that development consent must not be granted under this clause for a subdivision if:
 - a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

It is noted that:

- a) The subdivision WILL NOT result in 2 or more lots of less than the minimum area specified for such lots by the development standard, or
 - b) The subdivision WILL NOT result in at least one lot that is less than 90% of the minimum area specified for such a lot by the development standard. The single lot proposed less than the minimum area specified is 92.5% of the minimum area specified.
- The proposed subdivision will provide greater planning outcome relative to strict compliance with the development standard, by creating a lot size (Lot 3) which meets the scope of Clause 4.6(6), that is well-suited for contributing to housing in the area.
 - The proposed development promotes efficient land use, optimal infrastructure utilisation, and sustainable urban development. By integrating these elements, the proposal will contribute to a well-designed and vibrant community that meets the needs of residents while enhancing the overall liveability and functionality of the area.
 - The proposed subdivision will not have an adverse impact on the streetscape of the locality.
 - There is no foreseen public benefit for strict compliance.
 - The proposal will enhance the large lot residential area character by facilitating the subdivision of land to create a lot that aligns with the existing patterns, sizes, and configurations of properties in the area.

The proposed subdivision is believed to offer a better planning and housing outcome compared to a strictly compliant development, supported by sufficient environmental planning grounds. The development further aligns with the goals of meeting housing targets, and community needs, while maintaining a large lot residential setting. It meets the requirements of Clause 4.6 (6) of the LEP, with the exception to the development standard considered reasonable and appropriate in this context.

Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard

The request refers to *Wehbe v Pittwater Council* (2007) LEC 827. In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston outlined the rationale for development standards, and the ways by which a standard might be considered unnecessary and/or unreasonable.

Wehbe V Pittwater [2007] NSW LEC 827 also established the ‘five-part test’ to determine whether compliance with a development standard is unreasonable or unnecessary based on the following:

1. Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives;
2. Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary
3. Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;
4. Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or
5. Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.

With regard to the first test outlined in *Wehbe*, it is noted that the objectives of Clause 4.1 are:

- 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.

As outlined previously in this report under Objectives of the Development Standard, the proposed subdivision, inclusive of the single lot proposed less than the minimum area specified is reflective of the predominant subdivision pattern of the area, with reference to View Street and Wakaya Close, and reinforced this pattern for future development of the area.

The proposal has been designed in such a way to minimise any likely impact of the subdivision, and future single residential development, on the amenity of neighbouring properties, with lot sizes and dimensions certainly capable of facilitating compliance of future dwelling's with development controls, and not encouraging over-densification of the land.

The existing lot features minimal significant natural features in terms of trees and native vegetation, which have sufficient scope for retention. With regard to views and vistas, the contour of the land allows for the siting of dwellings to capture these features, while also retaining these for neighbouring dwellings.

With regard to the second test, the underling objectives and purpose of the minimum subdivision lot size are relevant to the proposed development.

The underlying objective and purpose of the minimum subdivision lot size development standard is relevant to the subject request, and it is considered that compliance with the objectives will be achieved notwithstanding the non-compliance with the numerical standard. It is considered that compliance in this case is unnecessary, as Clause 4.6(6) of the LEP provides scope for variation in instances such as this, stating that development consent must not be granted under this clause for a subdivision if:

- a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

As such, it is noted that:

- a) The subdivision WILL NOT result in 2 or more lots of less than the minimum area specified for such lots by the development standard, or
- b) The subdivision WILL NOT result in at least one lot that is less than 90% of the minimum area specified for such a lot by the development standard. The single lot proposed less than the minimum area specified is 92.5% of the minimum area specified.

With regard to the third test, it is considered that the underlying objective or purpose be defeated or thwarted were compliance required, given that it can be demonstrated that the proposal can suitably respond to achieving these objectives, as previously outlined. It is further noted that the parameters outlined under Clause 4.6(6) would also be defeated or thwarted should strict compliance be required. As such, it is considered that strict compliance with the minimum subdivision lot is not considered necessary for the proposed Lot 3 in this circumstance.

The fourth and fifth tests set down in Wehbe are not considered relevant to the proposal, for the following reasons:

- Council has not abandoned or destroyed the development standard through other approvals in the area.
- The zoning of the subject site is not considered to be unreasonable or inappropriate.

Conclusion

The proposed variation will not result in any detrimental impact or an outcome which differs from that which is expected on the site, considering its residential zoning and objectives. It is considered that there is an appropriate contextual fit of the proposed subdivision, of which adequate environmental planning grounds have been provided to support the proposed variation. The variation will not impact on the adjoining sites or on the existing and desired future character of the streetscape.

Strict compliance with Clause 4.1 of the LEP is considered to be unreasonable and unnecessary in this instance, and it is requested that Council apply flexibility in this particular circumstance, particularly considering the variation fits within the guides and limitations set out in Clause 4.6(6) – being that the single lot proposed which is less than the minimum area specified is not less than 90% (92.5%) of the minimum area specified.

The proposed development is considered to be consistent with the objectives of Clause 4.6, given the application of flexibility to Clause 4.1 will achieve the objectives of both the zone and minimum subdivision lot size development standard.

With regard to the proposal, the objectives of Clause 4.1 are achieved notwithstanding non-compliance in that, the overall development will be only 7.5% under the minimum lot size of 8,000m². The proposal is considered to be appropriate in the context of the site.

The proposed development also promotes the 'orderly and economic use and development of land' in accordance with the objects of the Environmental Planning and Assessment Act 1979 (the Act).

The proposed subdivision is believed to offer a better planning and housing outcome compared to a strictly compliant development, supported by sufficient environmental planning grounds. The development further aligns with the goals of meeting housing targets, and community needs, while maintaining a large lot residential setting. It meets the requirements of Clause 4.6 (6) of the LEP, with the exception to the development standard considered reasonable and appropriate in this context.

It is requested that Council support the proposal on the grounds outlined in this report.

Disclaimer

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