

## **Clause 4.6 Exception to Development Standards**

This Clause 4.6 Variation statement has been prepared against the SEPP Housing 2021, Secondary Dwellings – Chapter 3 – Part 1 – Division 1 & 2, non-discretionary development standards -the Act, s42.5 in relation to the minimum site area.

The proposed variation is in relation to site 1277 Canterbury Rd, Punchbowl (Lot 4, DP 16529)

### **1. Planning Instrument**

The relevant Planning Instrument that applies to the site is *State Environmental Planning Policy (2021)*.

### **2. Clause 4.6 Exception to Development Standards**

Pursuant to Chapter 3 Diverse Housing – Part 1 Secondary Dwellings - Division 1 and Division 2 of the SEPP Housing 2021 applies to the proposed development.

#### **Division 1 Preliminary**

##### **49 Definitions**

In this Part—

development for the purposes of a secondary dwelling includes the following—

- (a) the erection of, or alterations or additions to—
  - (i) a secondary dwelling, or
  - (ii) an ancillary structure within the meaning of Schedule 1,

**Comment:** The proposed development is for the construction of a detached secondary dwelling.

- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.  
residential zone means the following land use zones or an equivalent land use zone—

- (a) Zone R1 General Residential,
- (b) Zone R2 Low Density Residential,
- (c) Zone R3 Medium Density Residential,
- (d) Zone R4 High Density Residential,
- (e) Zone R5 Large Lot Residential.

**Comment:** The proposed development is located within the R2 Low Density Residential pursuant to Cumberland Local Environmental Plan 2021.

##### **50 Application of Part**

This Part applies to development for the purposes of a secondary dwelling on land in a residential zone if development for the purposes of a dwelling house is permissible on the land under another environmental planning instrument.

**Comment:** The proposed development is permissible with consent under the Cumberland LEP 2012.

##### **51 No subdivision**

Development consent must not be granted for the subdivision of a lot on which development has been carried out under this Part.

**Comment:** The proposed development does not result in subdivision of the proposed secondary dwelling.

## **52 Development may be carried out with consent**

- (1) Development to which this Part applies may be carried out with consent.
- (2) Development consent must not be granted for development to which this Part applies unless—
  - (a) no dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and
  - (b) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and
  - (c) the total floor area of the secondary dwelling is—
    - (i) no more than 60m<sup>2</sup>, or
    - (ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument—the greater floor area.

**Comment:** The total floor area of both the principal and secondary dwellings is no more than the maximum floor area permitted for a dwelling house as prescribed under the Cumberland LEP 2021. The proposed development does not result in subdivision of the proposed secondary dwelling, the total GFA of the proposed secondary dwelling does is 59m<sup>2</sup>.

## **53 Non-discretionary development standards—the Act, s 4.15**

- (1) The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.
- (2) The following are non-discretionary development standards in relation to the carrying out of development to which this Part applies—
  - (a) for a detached secondary dwelling—a minimum site area of 450m<sup>2</sup>

**Comment:** The site area is 423.7m<sup>2</sup>, non-compliant with the minimum site area required. A Clause 4.6 variation is sought for the numerical departure that represents a 6% variation.

Clause 4.6 of the LEP enables Council to consider a variation to development standards. The clause provides flexibility in applying certain development standards and aims to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

This correspondence aims to satisfy the requirements of Clause 4.6 to facilitate the proposed development of the site zone R2 under the SEPP Housing 2021.

The proposed variation is made having consideration for each component of Clause 4.6 and in accordance with the NSW Department of Planning and Infrastructure (DP&I) guideline *Varying Development Standards: A Guide* and has incorporated relevant principles of *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90 and *Wehbe v Pittwater Council* [2007] NSWLEC 827.

Each component of the Clause is addressed below.

**Table 1: Justification against the requirements of Clause 4.6**

Clause	Response/Justification
<b>Clause 4.6 (1) The objectives of this clause are as follows:</b>	
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,	The current lot size is 423.7sqm, zoned R2.  Noted: As outlined below, flexibility in the application of the minimum lot size standard is considered reasonable and appropriate in the circumstance of this application.
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	The SEPP Housing 2021 requires a minimum lot size of 450sqm, the proposed development has a shortfall of 26.3sqm. the proposed development will enable additional housing diversity to be provided which is the intent of the SEPP Housing Policy 2021.
2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.	The development standard is not expressly excluded from the operation of Clause 4.6.
(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—	This document comprised the written request to vary the development standard.
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and (b) that there are sufficient environmental planning grounds to justify contravening the development standard.	Strict compliance with the development standard in this instance is considered to be unreasonable and unnecessary as variation to the minimum lot size would hinder the opportunity to provide additional affordable housing in a desired area. The proposed satisfactorily meets the development standards for a secondary dwellings as specified in the SEPP as listed below: <ul style="list-style-type: none"> <li>• The proposed development does not result in subdivision of the proposed secondary dwelling.</li> <li>• No dwellings other than the principal and secondary dwelling will be located onsite.</li> <li>• The total floor area of both the principal and secondary dwellings is no more than the maximum floor area permitted for a dwelling house as prescribed under the NLEP.</li> <li>• The total floor area of the proposed secondary dwelling does not exceed 60m<sup>2</sup>.</li> <li>• The primary dwelling retains an off-street parking space.</li> </ul>
(4) Development consent must not be granted for development that contravenes a development standard unless—	This correspondence aims to adequately address the matter requires to be addressed in sub clause (3).
(a) the consent authority is satisfied that— (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	Clause 4.6(4)(a)(ii) requires consideration of the objectives of the development standard and zone objectives. Pursuant to Clause 4.6(4)(a)(ii) Council may be satisfied that the proposed development will be in the public interest because it is consistent

<p>(ii) the proposed development will be 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, and</p>	<p>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.</p> <p>The objectives of the R2 zone:</p> <ul style="list-style-type: none"> <li>• To provide for the housing needs of the community within a low density residential environment.</li> <li>• To enable other land uses that provide facilities or services meet the day to day needs of residents.</li> <li>• To encourage residential development that maintains the amenity of the surrounding area.</li> <li>• To ensure that non-residential land uses are located in a setting that minimises impacts on the amenity of a low-density residential</li> </ul> <p>The policy's intent is to increase the supply and diversity of affordable rental and social housing in the state.</p> <p>The Housing SEPP covers housing types including villas, townhouses and apartments that contain an affordable rental housing component, along with secondary dwellings (granny flats), new generation boarding houses, group homes, social housing and supportive accommodation.</p> <p>This development meets the definition of a secondary development under the Housing SEPP.</p>
<p>(b) the concurrence of the Planning Secretary has been obtained.</p>	<p>Noted. Council is responsible for obtaining consent of the secretary if not issuing consent under delegation.</p>
<p>(5) In deciding whether to grant concurrence, the Planning Secretary must consider—</p> <p>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</p> <p>(b) the public benefit of maintaining the development standard, and</p> <p>(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.</p>	<p>It is considered that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.</p> <p>As demonstrated throughout this correspondence, the contravention of the development will result in minimal environmental and social impacts. The public benefit of maintaining the standard is largely irrelevant as the proposed development is in keeping with the SEPP Policy and will result in a better affordable housing opportunity.</p> <p>Noted.</p>
<p>6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—</p> <p>(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard,</p>	<p>The proposed development is not within any of the stated zones.</p>

<p>or</p> <p>(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.</p>	
<p>7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).</p>	<p>Noted.</p>
<p>(8) This clause does not allow development consent to be granted for development that would contravene any of the following—</p> <p>(a) a development standard for complying development,</p> <p>(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which <a href="#">State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</a> applies or for the land on which such a building is situated,</p> <p>(c) clause 5.4,</p> <p>(caa) clause 5.5.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>N/A.</p>

#### **4. Objects of the EP&A Act**

Objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) are provided in Section 5 of the Act. Two objects relevant to the Clause 4.6 variation are 1.3(a), (b) and (c) and are discussed below.

Section 1.3(a) aims *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.*

The proposed secondary dwelling will offer additional housing which is the intent of the Housing policy in an existing residential environment.

Section 1.3(b) aims *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

Section 1.3(c) aims *to promote the orderly and economic use and development of land,*

The proposed development is within the existing lot and cannot be subdivided, it will promote orderly and economic use of the land. The site has access to services and infrastructure and is appropriately placed to allow development in an existing urban environment.

#### **5. Conclusion**

Whilst the proposed development results in a variation to the minimum lot size standard under the SEPP Housing 2021I, the proposed exception to a development standard will result in a better planning outcome by offering additional housing in a desired area than not allowing the exception.

Furthermore, the proposed development is consistent with zone objectives of the R2.

Yours Faithfully

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