

27 April 2022

Director Communities and Place
Wingecarribee Shire Council
Civic Centre, 68 Elizabeth Street
MOSS VALE NSW 2571

Dear Geoff,

**PPSSTH-7 – WINGECARRIBEE – DA20/0227 – 141 YARRAWA ROAD & 32 LOVELLE STREET, MOSS VALE
REQUEST TO VARY DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6 OF WINGECARRIBEE LOCAL
ENVIRONMENTAL PLAN 2010 ('WLEP 2010')**

Premise is assisting Prime Moss Vale Pty Ltd ('Applicant') in this matter. On behalf of the Applicant we submit the following request to vary the 40ha minimum lot size standard applicable to proposed Lot 1181 in the plan of subdivision for Stage 1. This request supersedes the written request prepared by Urbis dated 22 July 2019.

This request has been prepared having regard to the following:

- *Varying development standards: A Guide*, prepared by the NSW Department of Planning & Infrastructure, dated August 2011.
- Relevant case law.

1.0 The Site & DA 20/0227

The subject site is known as Chelsea Gardens & Coomungie Lands. It comprises Lot 12 DP 866036, 32 Lovelle Street and Lot 3 DP 706194, 141 Yarrawa Road, Moss Vale. It is approximately 2km south-east of Moss Vale Town Centre.

The site was rezoned by amendment to WLEP 2010 for urban development purposes in 2017. The rezoning incorporated predominantly *R2 Low Density Residential*, with a portion of *R5 Large Lot Residential*, a small area of *B1 Neighbourhood Centre*, and *RE1 Public Recreation*. Proposed Lot 1181 – the subject of this variation request – is majority zoned *RE1 Public Recreation*, with a minor portion zoned *B1 Neighbourhood Centre*. (see **Figures 1 & 2**)

DA 20/0227 is seeking development consent to a Concept Development Application for a staged residential subdivision of the subject land into approximately 1,200 residential lots. The application includes a detailed proposal for the first stage of the subdivision comprising 173 future residential lots, 1 future reserve lot and 1 residue lot, together with associated works including site clearing, tree removal, bulk earthworks and construction of roads and public infrastructure and open space.

Future reserve Lot 1181 will form a landscape buffer zone on the site's western boundary fronting Yarrawa Road to provide a windbreak and visual buffer. This is consistent with the intended outcome as illustrated by

the Indicative Master Plan for the land at Figure 2 of *Section 21: Chelsea Gardens Coomungie Precinct* of the *Moss Vale Township Development Control Plan* ('the MVDCP') – see **Figure 3** below.

Future reserve Lot 1181 is to be part embellished as part of the Stage 1 subdivision landscaping works.

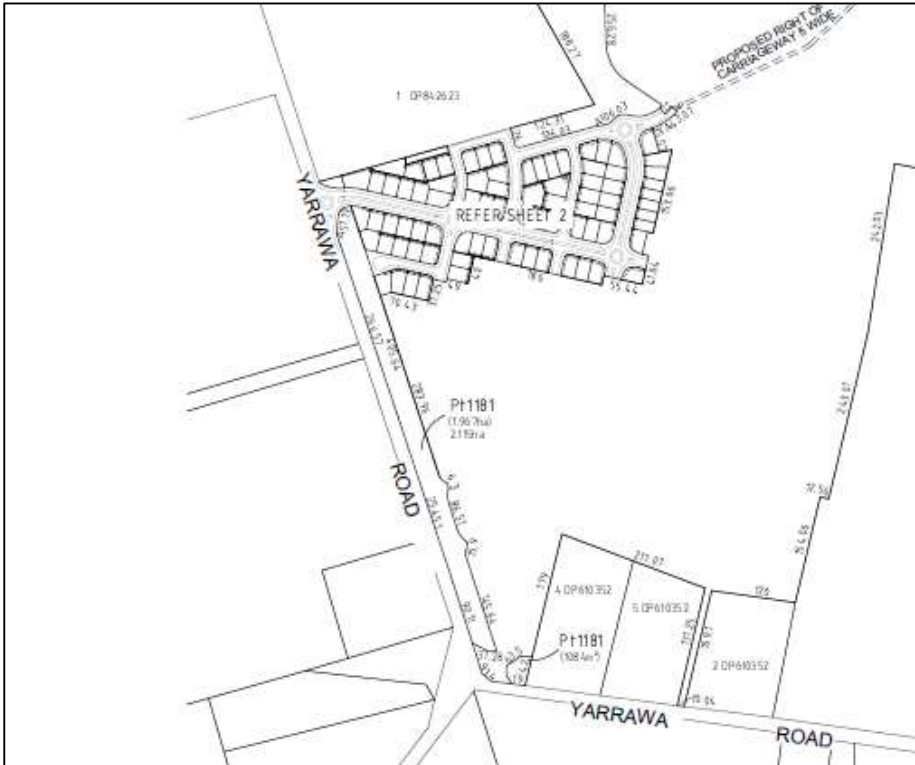


Figure 1- Lot 1181



Figure 2 – WLEP 2010 Land Use Zonings



Figure 3 – Extract from MVDCP Indicative Master Plan

2.0 The development standard sought to be varied

This request seeks to vary the minimum subdivision lot size control within clause 4.1 of WLEP 2010 that is applicable to Lot 1181.

Clause 4.1 of WLEP 2010 provides:

4.1 Minimum subdivision lot size

- (1) *The objectives of this clause are as follows—*
 - (a) *to identify minimum lot sizes,*
 - (b) *to ensure that the subdivision of land to create new lots is compatible with the character of the surrounding land and does not compromise existing development or amenity.*
- (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.*
- (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 2021.*

The relevant minimum lot size maps 8350_COM_LSZ_007H_020_20200131 and 350_COM_LSZ_007D_020_20211209 apply a 40ha minimum lot size standard to that part of the subject site containing Lot 1181.

Lot 1181 has an area of 2.115ha, being 5.287% of the 40ha lot size standard and a variation of 37.885ha.

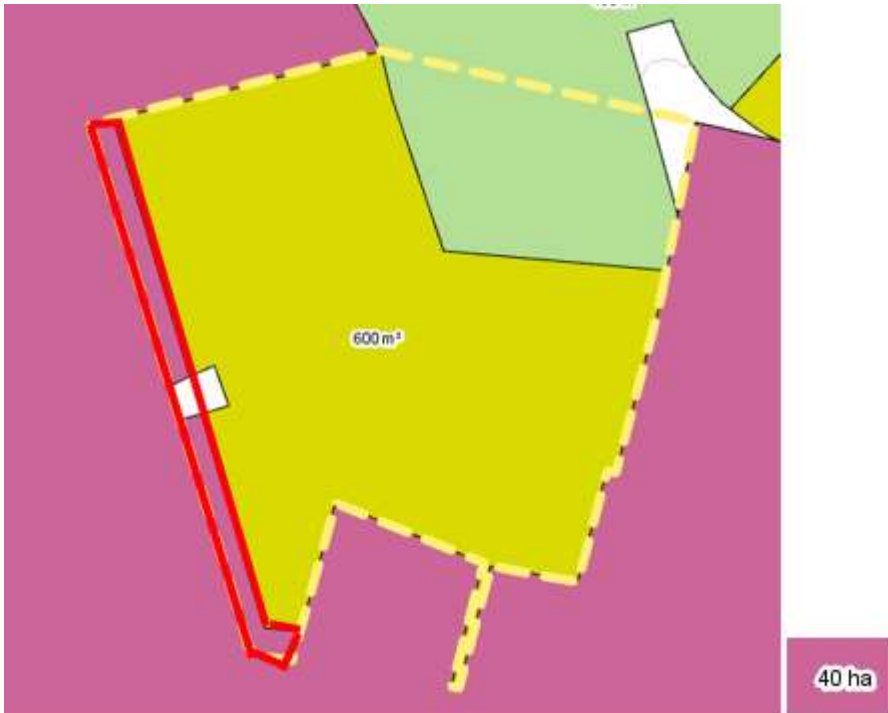


Figure 4 – Applicable Lot Size Area

3.0 Application of clause 4.6 of WLEP 2010

Clause 4.6 contains provisions that allow for exceptions to development standards, such as minimum lot size standards, in certain circumstances. The stated objectives at clause 4.6(1) 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.*

In determining whether to grant consent to a development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

- (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.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

Clauses 4.6(6), 4.6(7) and 4.6(8) are not relevant to the consideration of this request.

4.0 Key matters for consideration

Having regard to the relevant provisions of clause 4.6, *Varying development standards: A Guide*, prepared by the NSW Department of Planning & Infrastructure (August 2011) and case law, the following sets out what is considered to be the key questions and considerations for this request.

Is the planning control a development standard?

The minimum lot size standard at clause 4.1 of WLEP 2010 is a development standard capable of being varied pursuant to clause 4.6(2) of WLEP 2010.

What is the underlying purpose or object of the development standard?

In the case here, it is considered that the underlying purpose or object of the development standard, taking into account the RE1 zoning of the land and the Indicative Master Plan for the land at Figure 2 of *Section 21: Chelsea Gardens Coomungie Precinct* of the MVDCP, is to provide an area of open space offering a landscaped visual and acoustic buffer of the development to Yarrawa Road and to provide a windbreak to the estate. This purpose or object arose from the Land Use plan prepared for the Planning Proposal rezoning the land that identified a landscape buffer zone fronting Yarrawa Road to *provide visual and acoustic amenity to residents as well as eliminating driveways to the main road thereby also increasing the safety of residents and motorists.*

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a))?

It is considered that compliance with the 40ha development standard is unreasonable or unnecessary here principally because the proposed Lot 1181 will enable the achieving of the intended outcomes for this portion of the Precinct as envisaged by the RE1 zoning and the aforementioned Indicative Master Plan contained in the MVDCP, i.e. a landscaped visual and acoustic buffer of the development to Yarrawa Road and to provide a windbreak to the estate. Non-compliance with the development standard does not prevent the achievement of the intended planning outcome.

Accordingly:

- the objectives of the standard are achieved notwithstanding non-compliance with the 40ha lot size standard.
- The underlying objective or purpose would be defeated or thwarted if strict compliance with the 40ha lot size development standard was required. Strict compliance would thwart development of the Precinct as envisaged by its land use zoning and the adopted Indicative Master Plan. Compliance is therefore considered unreasonable.

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

It is considered that the following environmental planning grounds would sufficiently justify a contravention of the development standard:

- (i) The variation would enable development in accordance with the adopted Indicative Master Plan for the Precinct.
- (ii) The variation of the development standard would not result in any unintended environmental impacts by the development on its locality.

Has the written request addressed the matters at clause 4.6(3) (clause 4.6(4)(i))?

It is considered that the above addresses the matters as required by clause 4.6(3).

Is the proposed development in the public interest (clause 4.6(4)(a)(ii))?

Clause 4.6.4(a)(ii) requires consideration of the public interest in terms of the consistency of the proposed development with the objectives of the minimum lot size standard and the objectives of development in the zone in which the development is to be carried out.

As outlined above it is considered that the proposed development satisfies the underlying objective of the minimum lot size standard in the circumstances here.

As also outlined above:

- *The subject site is predominantly zoned R2 Low Density Residential, with a portion of R5 Large Lot Residential, a small area of B1 Neighbourhood Centre, and RE1 Public Recreation.*
- *Proposed Lot 1181 – the subject of this variation request – is majority zoned RE1 Public Recreation, with a small portion zoned B1 Neighbourhood Centre.*

The objectives of the *RE1 Public Recreation* zone are:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To enable ancillary development that will encourage the enjoyment of land zoned for open space.*

Relevantly, proposed Lot 1181 will be used as public open space. The landscape & acoustic buffer it will provide will be compatible with the adjoining proposed urban development as well as restricting vehicular access from the development to Yarrowa Road. It would not result in any unacceptable environmental impacts on the locality.

The objectives of the *B1 Neighbourhood Centre* zone are:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

- *To generally conserve and enhance the unique sense of place of business centre precincts in villages and towns by ensuring that new development integrates with the distinct village scale, character, cultural heritage and landscape setting of those places.*
- *To ensure that new development has regard to the character and amenity of adjacent and nearby residential areas.*

The development, by virtue of its consistency with the adopted Indicative Master Plan for the site, would be consistent with the planned character of / intended amenity for the Chelsea Gardens and Coomungie Lands residential area and its landscape setting whilst allowing for small scale retail, business and community uses serving the future local community. It is consistent with the intended hierarchy of business centres as envisaged by WLEP 2010.

It is therefore considered that the development would satisfy the public interest tests at clause 4.6.4(a)(ii).

Would non-compliance with the development standard raise any matter of significance for State or regional environmental planning?

It is not considered that minimum lot size non-compliance here would raise any matters of State or regional planning significance. The non-compliance enables the development of the site as envisaged.

Significantly, strict compliance with the development standard would clearly not allow development of the site as planned. This would raise matters of regional significance by restricting its intended development as a planned urban release area and delivering residential dwelling targets as planned by the *Wingecarribee Local Housing Strategy* (July 2021) for Chelsea Gardens and Coomungie Lands.

Is there a public benefit of maintaining the development standard?

It is considered, based on the above, that there would be no public benefit to maintaining the 40ha lot size standard. Maintaining the standard would prevent development of the site as envisaged by the adopted land use zones, the Indicative Master Plan of the MVDPC. It would unreasonably and unnecessarily restrict its development as a planned urban release area and delivering on adopted residential dwelling targets.

Any other matters required to be taken into consideration before granting concurrence?

There are no additional matters required to be taken into consideration before granting concurrence.

5.0 Conclusion

This request to vary the 40ha minimum lot size standard applying to Lot 1181 under WLEP 2010 has been prepared in accordance with the requirements of clause 4.6 of that planning instrument.

It is considered that the request demonstrates that strict compliance with this numerical standard is unreasonable and unnecessary in the circumstances of the case and would not be in the public interest. The request outlines sufficient environmental planning grounds to support the variation We say this as:

- Allowing the variation would allow development of the Chelsea Gardens and Coomungie Lands in accordance with the relevant land use zones and the adopted Indicative Master Plan for the site.
- It would support development of the site that achieves the adopted residential targets for the land as outlined by the Wingecarribee Local Housing Strategy.
- There would be no unacceptable environmental impacts arising from allowing the variation.

We therefore respectfully request the support of the Council and the Southern Regional Planning Panel.

Your sincerely,



Paul Hume
Senior Town Planner