



REQUEST UNDER CLAUSE 4.6 OF SEPP (PRECINCTS - WESTERN PARKLAND CITY) 2021

**Subdivision and Integrated Housing Development
The Northern Road, Bringelly**

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DOCUMENT INFORMATION

Prepared For: Maryland Estate Developments

Project Name: The Northern Road, Bringelly

Job Reference: 25/050

Date Approved: 9 May 2025

1.0 The Proposal

This written request is provided in support of a development application (DA) for a staged integrated housing development comprising Torrens title subdivision, construction of dwellings ranging in typology, road construction, construction of a basin and associated site works at 773 The Northern road, Bringelly (Lot 1 DP 218779) The Northern Road, Bringelly.

This Clause 4.6 Request relates to a proposed departure from the 30 hectare minimum lot size applicable to the site pursuant to Clause 4.1 (Minimum subdivision lot size) of Appendix 5 (Camden Growth Centres Precinct Plan) of State Environmental Planning Policy (Precincts - Western Parkland City) 2021.

1.1 Relevant Case Law

Clause 4.6(2) at Appendix 5 of State Environmental Planning Policy (Precincts – Western Parkland City) 2021 (Western Parkland City SEPP) allows the consent authority to grant consent for development despite the development contravening a development standard imposed by the Western Parkland City SEPP or any other environmental planning instrument.

In accordance with Clause 4.6(3), development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards to development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court (the Court) and the NSW Court of Appeal in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7;
4. *Brigham v Canterbury-Bankstown Council* [2018] NSWLEC 1406;
5. *Initial Action v Woollahra Municipal Council* [2018] NSWLEC 118; and
6. *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511.

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]-[51] and repeated in *Initial Action* [17]-[21]. Although *Wehbe* concerned a SEPP 1

objection, the common ways to demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe are equally applicable to cl 4.6 (*Initial Action* [16]):

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;
3. Underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
4. The development standard has been abandoned by the council; or
5. The zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).

The five ways to demonstrate compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way (*Initial Action* [22]). This Clause 4.6 Variation Request relies on the following:

- The objectives of the development standard are achieved notwithstanding noncompliance with the standard.

The environmental planning grounds relied on in the written request under Cl. 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* [24]).

1.2 Relevant Development Standard

The relevant development standard to which this variation request relates is Clause 4.1 (Minimum subdivision lot size) at Appendix 5 of the Western Parkland City SEPP, which requires:

- (3) *The size of any lot resulting from any such subdivision of land to which this section applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

A minimum lot size of 30 hectares applies to Lot 1, DP 218779 which is zoned RE2 Private Recreation. Lot 1, DP 218779 currently has the following area and is already substantially undersized:

- Lot 1 DP 218779 9.55 hectares

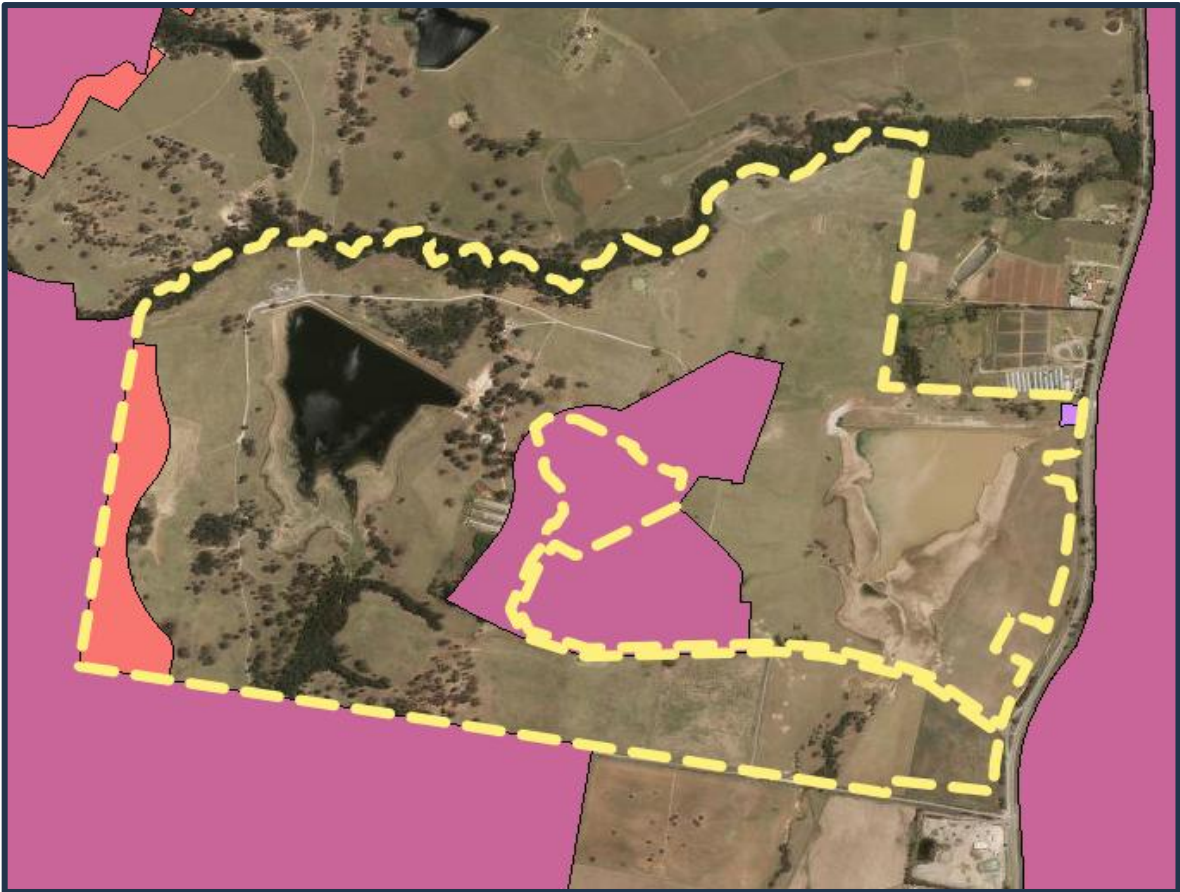


Figure 1:Minimum Lot Size Map extract (Source: NSW Planning Portal Spatial Viewer, 2025)

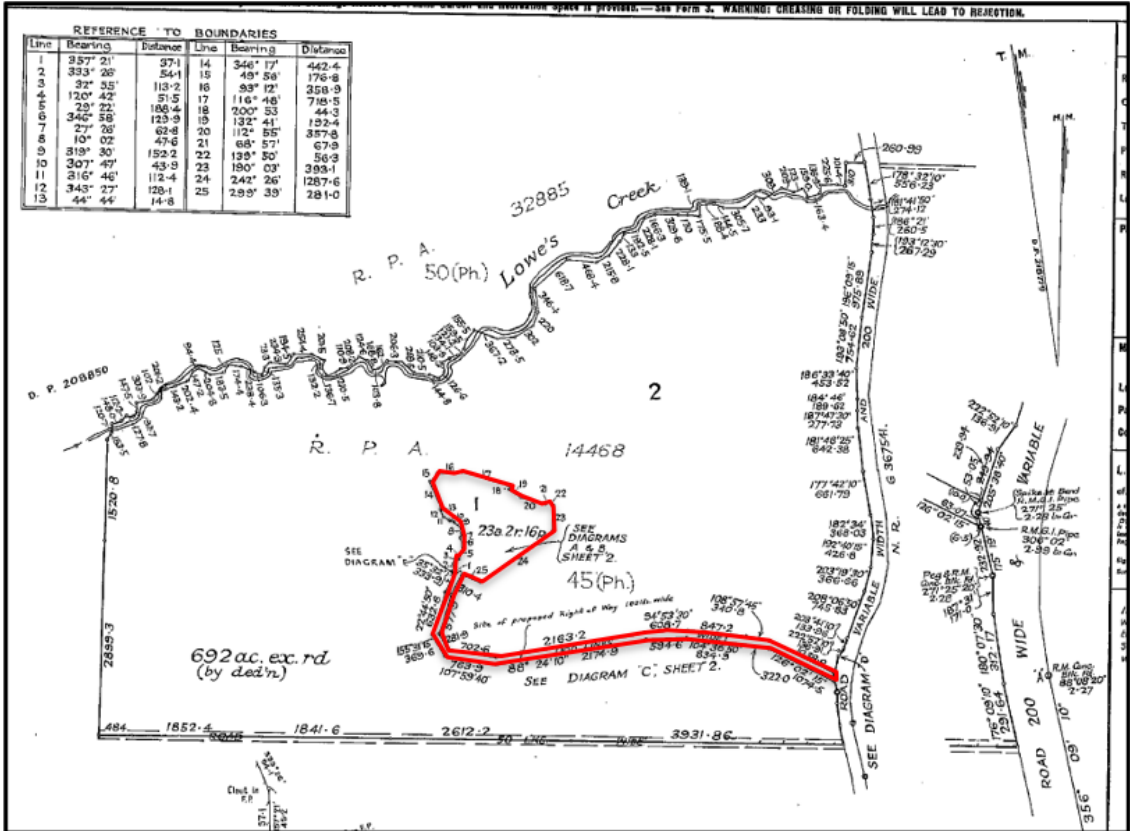


Figure 2:Figure 2: Existing Lot area of Lot 1, DP 218779

1.3 Is the Planning Control in Question a Development Standard?

'Development Standards' are defined under Section 1.4(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as follows:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

- (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, [emphasis added]**

Comment:

The minimum 30 hectare lot size in Section 4.1 at Appendix 5 of the Western Parkland City SEPP is a development standard, as defined at Section 1.4 (Definitions) of the EP&A Act.

2.0 The Contravention

The proposal results in the following variation to Council's minimum lot size area as demonstrated in the table below:

Table 1: Variation to Council's Minimum Lot Size Development Standard			
Minimum Lot Size Control	Existing Lot Size	Proposed Lot Size	Variation
30ha	9.55ha	7.30ha	The proposed subdivision results in a further decrease in lot size from 9.55ha (which represents a 68.1% variation) to 7.30ha (which represents a 75.6% variation).

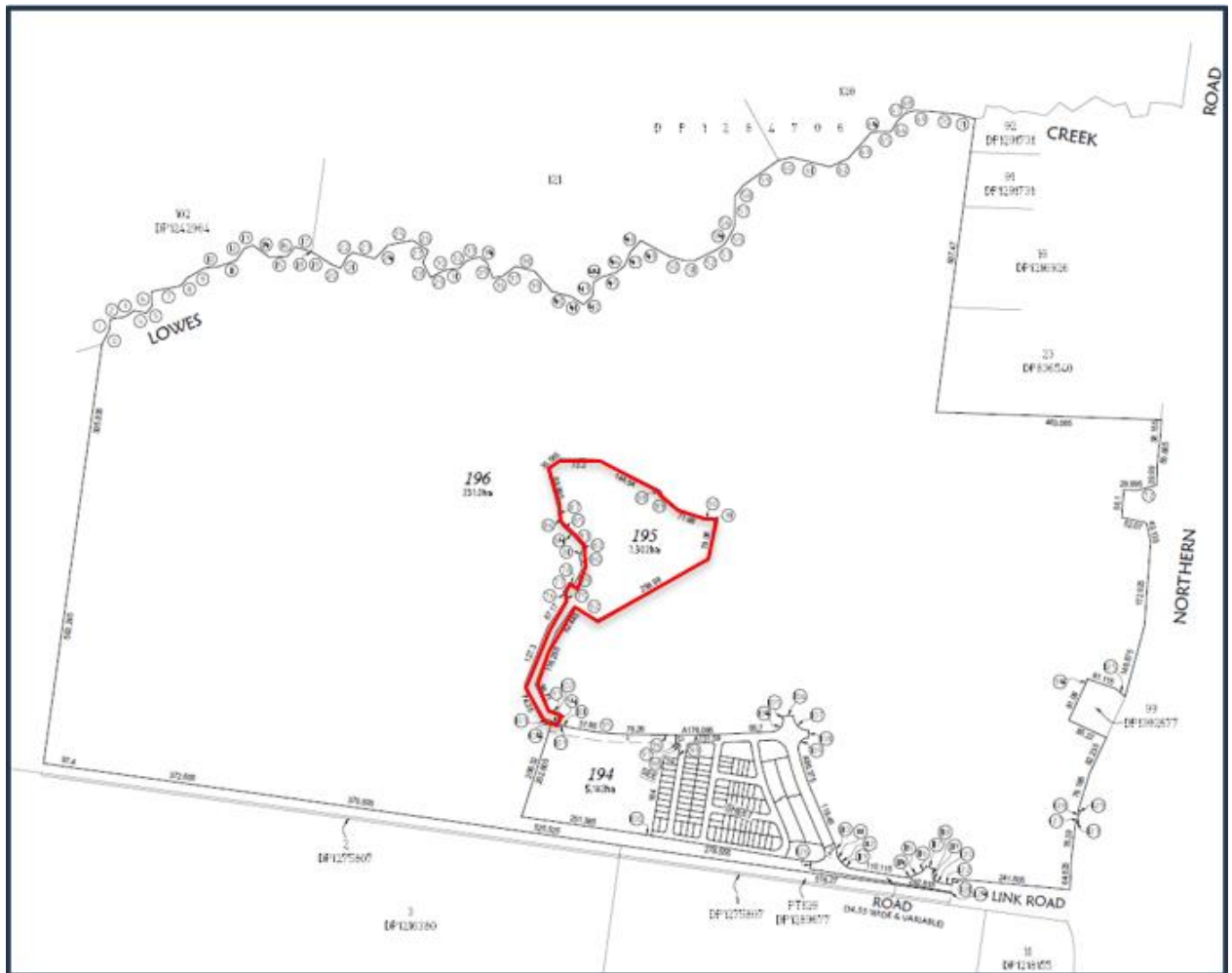


Figure 3: Plan of Subdivision extract (Source: Colliers, 2025)

3.0 Justification of the Contravention

It is considered that the proposal satisfies one of the five ways established in Wehbe that demonstrate that the development standard is unreasonable and unnecessary for the reasons set out below.

3.1 The Objectives of the Development Standard are achieved notwithstanding non compliance with the standard.

The proposed subdivision component of the development is consistent with the following relevant objectives of Clause 4.1 (Minimum subdivision lot size):

- (a) *to ensure orderly and efficient use of land,*
- (b) *to ensure a minimum lot size sufficient for development,*

The creation of proposed Lot 195 is the direct result of the development of the site in accordance with the Indicative Layout Plan (ILP), to deliver low density residential development on the land to the north of the Link Road. The creation of the residential lots, as well as the resultant residue lots, is ensuring the orderly

and efficient use of the land, noting that the existing Lot 1 in DP 218779 is currently under the 30 hectare minimum lot size.

The area of proposed Lot 195 is sufficient to accommodate future development in accordance with the ILP.

On this basis, the objectives of the development standard are achieved notwithstanding non-compliance with the standard and compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

3.2 Impacts of the Contravention

It is acknowledged that proposed Lots 195 and 196 are procedurally created as residue lots under the proposed subdivision, to deliver the proposed residential development to the south. Both Lots 195 and 196 will be subject to future Development Applications to realise the ILP.

The existing Lot 1 in DP 218779 and part Lot 100 in DP 1302677 comprise the State and locally heritage listed 'Maryland Homestead, including homestead, grounds, outbuildings, stone cottage, former winery, stone store and gatekeeper's cottage' – refer to **Figure 4** below.

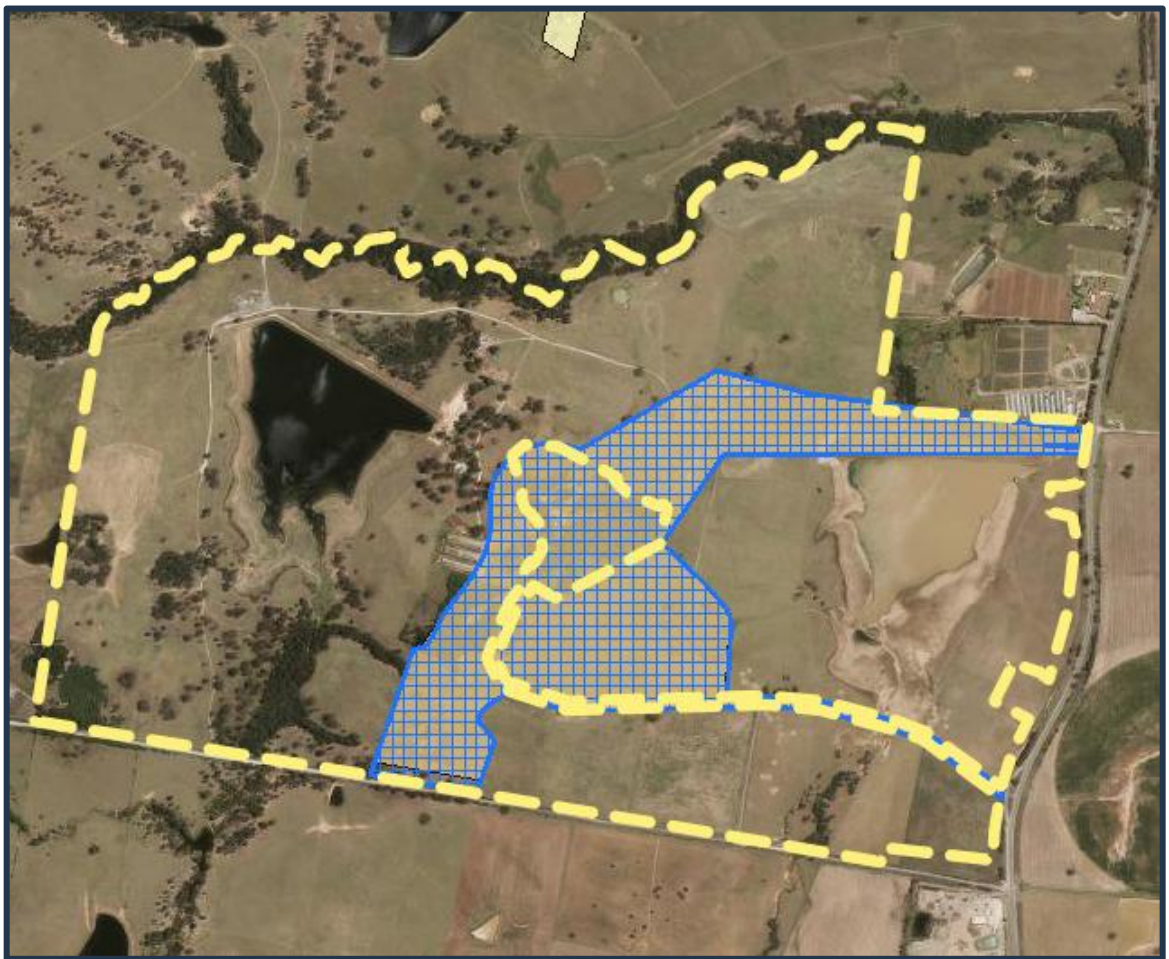


Figure 4:Heritage Map extract – local listing shaded brown and State heritage listing hatched blue (Source: Colliers, 2025)

The RE2 Private Recreation zone and 30 hectare minimum lot size area generally aligns with the curtilage of the State and locally listed heritage item. The adopted ILP identifies this land as a 'Recreation Area' that will be retained in private ownership. The range of land uses permitted in Schedule 1 (Additional permitted uses) at Appendix 5 of the Western Parkland City SEPP promotes the adaptive re-use of the heritage buildings.

The proposed subdivision and consequent reduction in area of the existing Lot 1 in DP 218779 is the result of the eastern access track being absorbed into proposed residue Lot 196. This access track becomes redundant once the proposed road works are completed, as these will facilitate access to the heritage site from The Northern Road via the Link Road and local road network, consistent with the endorsed ILP - see Figure 5 below.

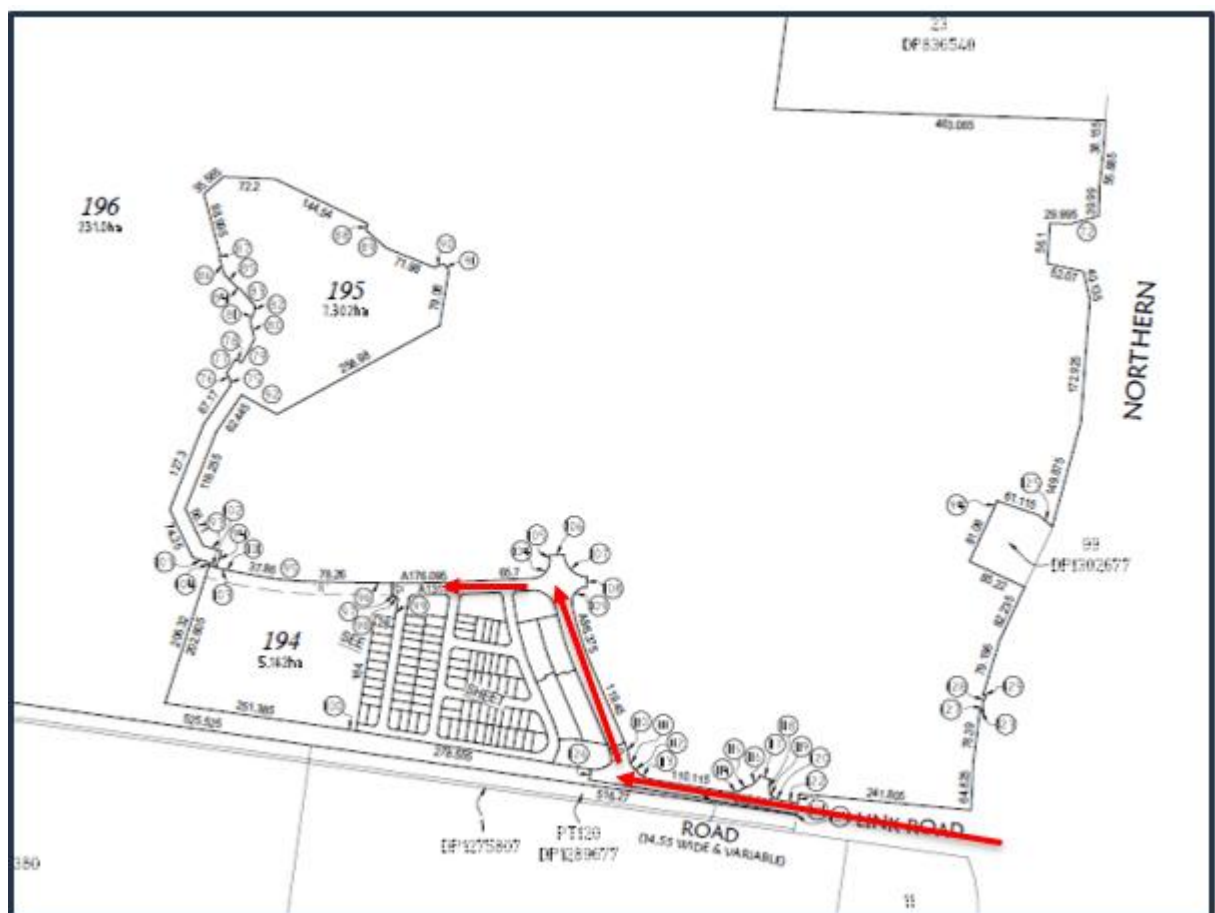


Figure 5: Plan of Subdivision extract showing proposed road network to be constructed with the DA and the connection to the heritage item (Source: Colliers, 2025)

The contravention of the minimum lot size development standard will not result in any adverse impacts.

3.3 Consistency with Zone Objectives

The proposed subdivision will not preclude the objectives of the RE2 Private Recreation zone being realised as part of the future development of proposed Lot 195 and the adjoining proposed Lot 196, specifically:

- *To enable land to be used for private 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.*

The RE2 zoned land would remain wholly within proposed Lot 195 and part Lot 196; consistent with the existing Lot 1 DP 218779 and part Lot 100 DP 1302677.

4.0 Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case (Clause 4.6(3)(a))?

Clause 4.6(3)(a) of the Western Parkland City SEPP requires the departure from the development standard to be justified by demonstrating:

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Comment

The proposed subdivision component of the development is consistent with the following relevant objectives of Clause 4.1 (Minimum subdivision lot size):

- (a) *to ensure orderly and efficient use of land,*
- (b) *to ensure a minimum lot size sufficient for development,*

The creation of proposed Lot 195 is the direct result of the development of the site in accordance with the ILP, to deliver low density residential development on the land to the north of the Link Road. The creation of the residential lots, as well as the resultant residue lots, is ensuring the orderly and efficient use of the land, noting that the existing Lot 1 in DP 218779 is currently under the 30 hectare minimum lot size.

The RE2 zoned land would remain wholly within proposed Lot 195 and part Lot 196; consistent with the existing Lot 1 DP 218779 and part Lot 100 DP 1302677.

On this basis, the objectives of the development standard are achieved notwithstanding non-compliance with the standard and compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

5.0 Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard (Clause 4.6(3)(b))?

Clause 4.6(3)(b) of the Western Parkland City SEPP requires the departure from the development standard to be justified by demonstrating:

There are sufficient environmental planning grounds to justify contravening the development standard

Comment

It is our opinion that there are sufficient environmental planning grounds to justify contravening the minimum lot size development standard in this instance. These are as follows:

- The development will not preclude the objectives of the RE2 Private Recreation zone, being realised at such time that proposed Lot 195 (and Lot 196) are developed, in accordance with the adopted ILP.
- The development meets the relevant objectives of Section 4.1 of the Western Parkland City SEPP, in that it is promoting the orderly and efficient use of the land.
- The existing Lot 1 in DP 218779 is currently undersize and does not meet the minimum 30 hectare lot size.
- The area of proposed Lot 195 is sufficient to accommodate future development in accordance with the ILP.
- The proposed variation will not set an undesirable precedent for the locality, acknowledging the site-specific application of the 30 hectare minimum lot size within the Lowes Creek Maryland Precinct.

6.0 Conclusion

The proposed contravention of the minimum lot size is based on the reasons outlined in this request that are summarised as follows:

- It is considered that this proposal presents an individual circumstance to which the objectives of Clause 4.6 are applicable, namely, to achieve better outcomes for development by allowing flexibility in particular circumstances.
- Strict compliance with the minimum lot size development standard would provide no discernible benefit to the development, acknowledging that the existing Lot 1 in DP 218779 is currently under the 30 hectare minimum lot size.
- The proposed development will not create an undesirable precedent.

In view of the above, it is considered that this written request has adequately addressed the matters at Clause 4.6(3) of the Western Parkland City SEPP and Council's support to contravene the minimum lot size development standard, at Section 4.1 of the Western Parkland City SEPP, is therefore sought.

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