

**MAITLAND LEP - CLAUSE 4.1 -
MINIMUM SUBDIVISION LOT SIZE**

27 LANG DRIVE, BOLWARRA HEIGHTS

CLAUSE 4.6 WRITTEN REQUEST

MARCH 2025

VERSION 1



WILSON PLANNING

1.0 Introduction

1.1 Subject Site

The subject site comprises Lot 1 DP115643327, and is known as 27 Lang Drive, Bolwarra Heights. The site is irregular in shape and has frontages to both Hilldale Drive and Lang Drive.

The subject site contains an existing dwelling and ancillary development including detached shed. Access is provided from Lang Drive.

The site is predominantly cleared of native vegetation, with only a small stand of mature trees around the existing dwelling. It has a natural watercourse traversing its western portion and is bushfire prone land.

The site is zoned R5 Large Lot Residential pursuant to Maitland Local Environmental Plan (MLEP) 2011. The minimum lot size applicable to the land under MLEP is 5,000m².

1.2 Background

1.2.1 Application Details

DA 2023/832 sought consent for the subdivision of Lot 1 into 15 residential lots and associated roadworks, servicing, and landscaping. The DA was refused by Council due a lack of information. The applicant seeks to have this decision reviewed under Section 8.2 of the Environmental Planning and Assessment Act 1979, as is their right. All of the insufficient information that Council raised in the refusal accompanies the current Review Application. Additionally, this Clause 4.6 Written Request addresses the amended subdivision layout presented as part of the current application. Of the 15 proposed lots, 14 are greater in area than the minimum lot size while one (Proposed Lot 9) is less than the minimum lot size.

1.2.2 Clause 4.6 - Summary

The applicant seeks to use Clause 4.6 of MLEP to enable Council to flexibly apply the provisions of Clause 4.1 and approve an exception to the identified development standard in line with Clause 4.6(6).

This request is made pursuant to Clause 4.6 of MLEP; justifies why strict compliance with Clause 4.1 of the MLEP is unnecessary in the circumstances of the case; and demonstrates that there are sufficient environmental planning grounds to justify approval of a variation to the identified development standard.

The variation request has been prepared in accordance with the NSW Planning & Infrastructure Guideline “Varying Development Standards: A Guide” (the Guideline); considers NSW Land and Environment Court planning principles and case law; and includes other information deemed relevant to the justification of the variation.

2.0 Details of development standard to be varied

2.1 Name of EPI that applies to the land

Maitland Local Environmental Plan (MLEP) 2011.

2.2 Zoning of the land

R5 Large Lot Residential.

2.3 Objectives of the zone

The objectives of the R5 Zone are:

- *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.*

The proposed subdivision is entirely consistent with the objectives of the R5 zone noting the following:

- The proposed subdivision will contribute to large-lot residential development in the area which is a popular lifestyle offering in the Maitland LGA.
- The proposal will not hinder the proper and orderly development of urban areas in the future given the site is surrounded by existing large lot residential development.
- The proposal will not unreasonably increase the demand for public services or public facilities.
- The proposal will not result in any land use conflicts.

2.4 Development standard being varied

Clause 4.1 of MLEP - Minimum subdivision lot size

2.5 Performance based development standard?

The development standard in Clause 4.1 is not performance based. Rather, it is a numerical control.

2.6 Objectives of the development standard

The objectives of Clause 4.1 are as follows:

- (a) to ensure that lot sizes are able to accommodate development that is suitable for its purpose and consistent with relevant development controls,
- (b) to prevent the fragmentation of rural land.

2.7 Numeric value of the development standard in the EPI

Minimum Lot Size – 5,000m²

2.8 Proposed numeric value of the development standard in DA

Proposed Lot No.	LEP Min. Lot Size	Proposed Lot Size	Variation
Lot 9	5,000m ²	4,505m ²	9.9%

2.9 Percentage variation between proposal and EPI

See table in Section 2.8 above.

3.0 Assessment of variation to development standard

3.1 MLEP Clause 4.6 Considerations

Clause 4.6 of MLEP provides:

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

- (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.*

Comment

The following sections of this written request confirm that the proposed development of the subject site has merit and meets the objectives of this clause, and other relevant clauses. As such, Council's flexibility is sought in applying the development standard on this occasion.

(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.

Comment

There is nothing within Clauses 4.1 or 4.6(8) that exclude the operation of Clause 4.6 in this instance.

(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:

- (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.*

Comment

An assessment of the variation is provided in the following sections of this report, in accordance the requirements of Clause 4.6(3).

(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—

- (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.*

Comment

The site is zoned R5. The proposed subdivision will result in only one lot (Proposed Lot 9) being below the minimum area specified in Clause 4.1 (5,000m²). Further, the variation to lot size for Proposed Lot 9 is less than 90% of the minimum lot size (9.9% variation).

3.2 Clause 4.6(3)(a) Compliance with the development standard is unreasonable and/or unnecessary in the circumstances of the case

In the circumstances of this case, compliance with the minimum lot size development standard is unreasonable or unnecessary for the following reasons.

Objectives of Clause 4.1

Proposed Lot 9 contains an existing principal dwelling, attached secondary dwelling, and inground swimming pool. All of this development is capable of being retained within a compliant building envelope that takes into consideration front, side and rear setback requirements of Maitland DCP, as shown in Figure 1 below. As such it is proven that the size of Proposed Lot 9 is capable of accommodating suitable development and complies with the first objective of Clause 4.1, despite the minor non-compliance.

In relation to the second objective, the R5 zone is a residential zone that accommodates larger lots in a rural setting. The proposed subdivision meets the objective of providing low density housing on larger lots in a rural setting without the fragmentation of rural land, notwithstanding one of 15 lots is slightly undersized.

The proposed subdivision is consistent with the objectives of Clause 4.1. To refuse the subdivision due to Proposed Lot 9 being slightly undersized would have little planning benefit.

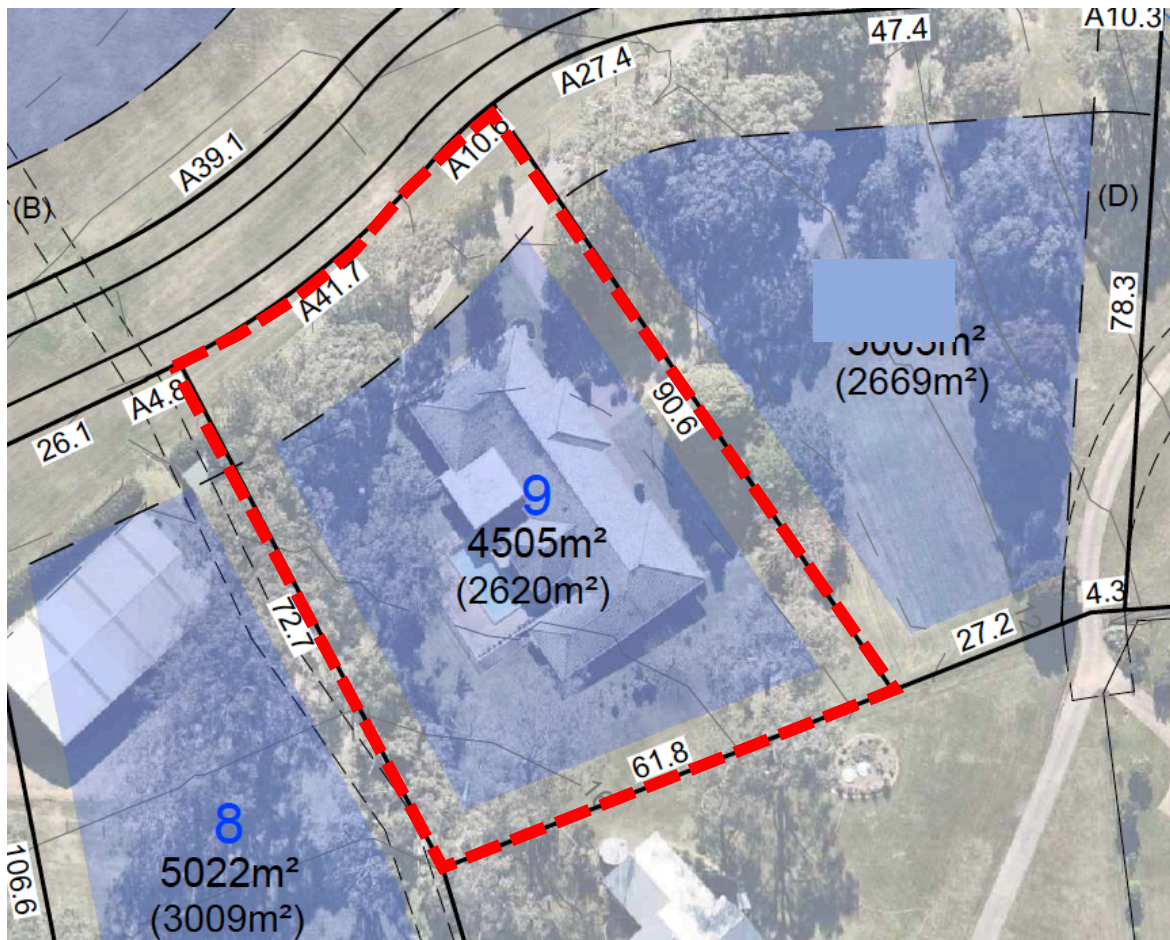


Figure 1 – Existing principal dwelling, secondary dwelling and swimming pool all within building envelope within Proposed Lot 9 despite this lot being undersized

Adjoining lot size - Lot 4 DP 1156433

The lot immediately to the south of the proposed subdivision, Lot 4 DP 1156433, has an area of 4,750m², contains a single dwelling, and sits comfortably within its rural setting despite the fact that it is less than 5,000m².

As such, the development outcome on Proposed Lot 9 and adjoining is already known, as shown in Figure 2, and there will therefore be no new or additional detrimental land use outcomes resulting from the undersized parcel. Setbacks/building separation is already known, and no trees or vegetation will be removed from the rear of Proposed Lot 9, ensuring existing screen planting remains. It is therefore considered unnecessary for Proposed Lot 9 to strictly comply with the minimum lot size.



Figure 2 – Existing dwellings within Proposed Lot 9 and Lot 4 DP 1156433

3.3 Clause 4.6(3)(b) Sufficient environmental planning grounds to justify contravening the development standard

The subject land is constrained by flooding and bushfire, and contains a riparian corridor, remnant native vegetation, and existing easements for access. Slope and geometry also have impacts on road design/location. Additionally, there is a desire to retain the existing dwelling/secondary dwelling. The proposed subdivision layout reflects a response to all of these constraints.

Clause 4.6(6) allows only one undersized parcel and Proposed Lot 9 was chosen to be undersized on this occasion due to the fact that it contains existing development that complies with DCP requirements, as outlined in Section 3.2 above, and non-compliance with the lot size requirement does not negatively impact on the overall environmental and planning benefits of the subdivision, the rural setting, or the amenity of existing neighbours.

In line with the objects stated in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979, the proposed lot layout, with one undersized lot, encourages the orderly and economic use and development of the subject land in line with the LEP and DCP while conserving, protecting, and managing natural resources, vegetation, riparian corridor and prevailing rural setting. It will ensure utilities are extended to service new housing and respect adjoining amenity.

There would be no planning benefit or merit in refusing to approve one undersized lot.

4.0 Conclusion

Development standards are a means of implementing planning purposes for a development, class of development or specific locality.

The variation to minimum lot size is considered appropriate to the context and circumstances of the site, without having detrimental environmental, amenity or privacy impacts.

As the above assessment indicates, the proposal is considered to be compatible with the existing subdivision pattern, rural setting, and future development outcome, despite the non-compliance with the minimum lot size for Proposed Lot 9 only.

It is possible that other sites with similar characteristics will apply for variations to minimum lot size. However, in every instance clause 4.6 is invoked, it will be necessary for Council to be satisfied that the development is consistent with the objectives of the relevant standard, that the development will fit within the character of the locality, and that the development will have no detrimental physical, amenity or privacy impacts, as is the case here.

This Written Request satisfies the provisions of clause 4.6(3) and 4.6(6) of MLEP as it has been demonstrated that:

- compliance with the minimum lot size is unnecessary and unreasonable in the circumstances of this case,
- there are sufficient environmental planning grounds to justify contravening the development standard
- only one undersized parcel is proposed, and this has a variation less than 10%.

Council's favourable consideration of this Written Request and the 8.2 Review Application it accompanies is sought.