

## Clause 4.6 – Exceptions to Development Standards

Request to Vary Clause 4.1 – Minimum Subdivision Lot Size at 77 Beattie Street, Balmain

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**Address:** 118 and 200 Anambah Road, Anambah - lots 721 in DP 1191240 and 712 in DP 1233410

**Proposal:** Subdivision of the existing two (2) Torrens title lots into two (2) lots at the site.

**Date:** 24 April 2025

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### 1. Introduction

This document is a written request submitted under clause 4.6 of the Inner West Local Environmental Plan 2022 (IWLEP). The development standard for which the variation is sought is under clause 4.1 (Minimum Subdivision Lot Size) applying to the proposed development.

### 2. Site

The site is located at 118 and 200 Anambah Road, Anambah and are legally described as lots 721 in DP 1191240 (200 Anambah Road) and 712 in DP 1233410 (118 Anambah Road).

### 3. Development Proposal

The DA seeks consent for the subdivision of the existing two (2) Torrens title lots into two (2) lots as set out in the table below.

Site	Current area	Proposed area	Change
Anambah House (Proposed Lot 200)	24.18ha	35ha	+10.82ha
Vacant Lot (Proposed Lot 199)	52.98ha	42ha	-11.98ha

*Table 1: Lot Summary Table*

The subdivision is effectively a boundary adjustment, but development consent has been pursued as the re-allocation of the lot configurations is considered more than minor in the circumstances.

The existing vacant lot 712, with an area of 52.98ha and satisfies the provisions of clause 4.2A (3)(a) of the Maitland LEP to permit the erection of a dwelling on the lot.

Existing lot 721, which includes Anambah House does not satisfy of clause 4.2A (3)(a) of the Maitland LEP. The lot containing Anambah House however satisfies the provisions of Clause of clause 4.2A (5) of the Maitland LEP which permits the replacement of a lawfully created dwelling.

Both existing lots therefore enjoy dwelling entitlements.

For subdivision involving land zoned RU2 Rural landscape and C2 Environmental Conservation must first satisfy the requirements of clause 4.6(6) before a request for a variation to a development standard under clause 4.6(3).

The application involves land zoned RU2 Rural landscape and C2 Environmental Conservation and proposes to create one lot that complies with the minimum lot area development standard and only creates one (1) lot that does not comply with the minimum lot area development standard.

The application satisfies the circumstances of clause 4.6(6)(a) as the proposed subdivision does not result in 2 or more lots less than the minimum lot area development standard.

A request to vary the minimum lot size under clause 4.6(3) is therefore able to be considered.

#### **4. Environmental Planning Instrument (EPI), development standard and proposed variation**

##### ***4.1. What is the EPI being varied?***

The Maitland Local Environmental Plan 2011 MLEP).

##### ***4.2. What is the zoning of the land?***

The land is zoned RU2 Rural landscape and C2 Environmental Conservation.

##### ***4.3. What is the development standard being varied? And under what clause is the development standard listed in the EPI?***

The development standard being varied is the Minimum Subdivision Lot Size development standard listed under clause 4.1 of the MLEP.

##### ***4.4. What is the type of development standard being varied?***

The development standard in clause 4.1 is a numerical control.

##### ***4.5. What is the numeric value of the development standard in the EPI applying to the site?***

A minimum subdivision lot size of 40ha applies to the site pursuant to clause 4.1. An extract of the MLEP Lot Size Map is provided in Figure 1.

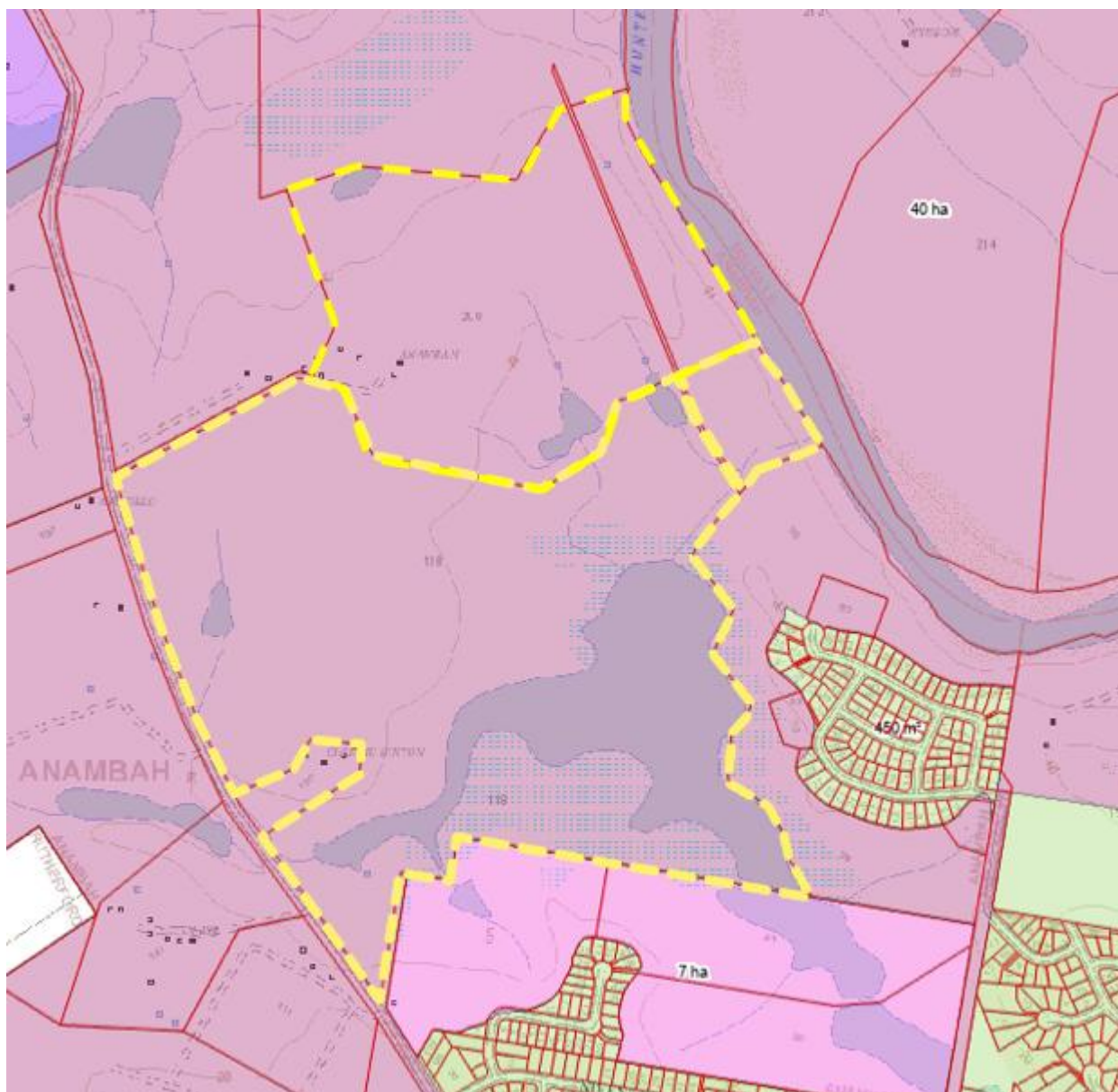


Figure 1: Extract of the MLEP Lot Size Map – sites dashed yellow

#### 4.6. What is the proposed numeric value of the development standard in the development application?

The application proposes the following subdivision lot sizes for each lot

Site	Current area	Proposed area	Change
Anambah House (Proposed Lot 200)	24.18ha	35ha	+10.82ha
Vacant Lot (Proposed Lot 199)	52.98ha	42ha	-11.98ha

Table 2: Lot Summary

**4.7. What is the percentage variation (between the proposal and the environmental planning instrument)?**

Table 3 details the proposed numeric breaches and the percentage of variation to the development standard.

Site	Development Standard	Proposed area	Variation
Anambah House (Proposed Lot 200)	40ha	35ha	12.5%
Vacant Lot (Proposed Lot 199)	40ha	42ha	complies

Table 3: Lot variation

**5. Justification of the Proposed Variation**

**5.1. Clause 4.6 Exceptions to Development Standards**

Clause 4.6 establishes the framework for varying development standards in an EPI.

Clause 4.6(3) identifies that 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 contravening the development standard.*

This written request has been prepared in accordance with the *Guide to Varying Development Standards*, published by the NSW Department of Planning and Environment in November 2023 and has regard to the relevant case law including the following judgements:

- *Winten Property v North Sydney Council (2001) NSW LEC 46*
- *Wehbe v Pittwater Council (2007) NSW LEC 827*
- *Four2Five Pty Ltd v Ashfield Council (2015) NSW LEC 90*
- *Randwick City Council v Micaul Holdings Pty Ltd (2016) NSW LEC 7*
- *Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSW LEC 118*
- *Initial Action Ltd v Woollahra Municipal Council (2019) NSW LEC 1097*
- *RebelMH Neutral Bay Pty Limited v North Sydney Council (2019) NSWCA 130*

**5.2. How is compliance with the development standard unreasonable or unnecessary in the circumstances?**

The five common ways to establish whether compliance with the development standard is unreasonable or unnecessary have been summarised in *Wehbe v Pittwater Council [2007] NSWLEC 827* and are outlined as follows:

Compliance with the development standard is unreasonable or unnecessary if the:

1. *The objectives of the development standard are achieved notwithstanding the non-compliance*
2. *The underlying objective or purpose is not relevant to the development*
3. *The underlying objective or purpose would be defeated or thwarted if compliance was required*
4. *The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard*
5. *The zoning of the land on which the development is proposed was unreasonable or inappropriate.*

This written request relies on the first test described in *Wehbe*, in that the objectives of the development standard are achieved notwithstanding the non-compliance.

The proposed development achieves the objectives of the Minimum Subdivision Lot Size development standard identified in clause 4.1 despite the non-compliance with the development standard, as demonstrated overleaf.

- (a) *to ensure that lot sizes are able to accommodate development that is suitable for its purpose and consistent with relevant development controls,*

The proposed subdivision is effectively a boundary adjustment between two existing lots that both have a dwelling entitlement. The lot containing the heritage significant Anambah House increases by 10.82ha while the vacant proposed lot 199 remains compliant with the minimum lot size of 40ha and remains suitable for grazing and potential rural residential use.

The application retains a compliant lot and reduces the non-compliance of the lot containing Anambah House.

Both lots remain suitable for development permitted in the RU2 Rural landscape and C2 Environmental Conservation zones.

- (b) *to prevent the fragmentation of rural land,*

The proposal does not result in the fragmentation of rural land as the application is for a two lot into two lot subdivision.

Proposed lot 199 remains compliant and proposed lot 200 (Anambah House lot) reduces the existing level of numerical non-compliance to the minimum lot size development standard.

### **5.3. *Are there sufficient environmental planning grounds to justify contravening the development standard?***

The demonstration of environmental planning grounds must focus on the aspect of the development that contravenes the development standard, not the development as a whole.

It is considered that there are sufficient grounds associated with the development to justify contravening the development standard which are detailed as follows:

#### **Existing non-compliant lot:**

The proposed subdivision relates to two existing lots, one compliant and the second non-compliant.

The application proposes to reduce the extent of numerical non-compliance of the lot containing Anambah House.

The re-subdivision in effect increases the extent of compliance with the numerical development standard.

**Heritage:**

The lot containing the heritage item is to be increased from 24.18ha to 35ha. The increase in area provides a greater physical curtilage to the dwelling and is supported by the heritage assessment undertaken for the application.

**Split zoning:**

The land the subject of the application is subject to a split land use zoning, part RU2 Rural landscape and part C2 Environmental Conservation.

Consistent with the intent of clause 4.2C of the MLEP proposed lot 200 contains only land zoned RU2 Rural landscape. Proposed lot 199 will continue to be the lot that contains the split RU2 Rural landscape and C2 Environmental Conservation zoned land.

It is noted that the part of the land zoned C2 Environmental Conservation is a permanent waterbody .

**Maintenance of dwelling entitlements:**

Both existing lots have dwelling entitlements. The subdivision proposed does not alter or intensify the number of dwelling entitlements, with the current status quo maintained.

**6. Is there any other relevant information relating to justifying the variation?**

The proposal accords with the stated objectives for the Minimum Subdivision Lot Size development standard under clause 4.1, confirming that no purpose would be served by enforcing compliance with the standard.

The subdivision does not conflict with the heritage status and significance of Anambah House which would be accommodated on proposed lot 200 and does not intensify the number of rural lots or the number of dwelling entitlements that exist.

The non-compliance to the development standard facilitates a re-subdivision of the land to increase the physical curtilage of Anambah House and retains a compliant rural zoned lot in proposed lot 199.

A development strictly complying with the numerical standard would not serves any planning purpose in the circumstance and would fail to recognise the current extent of numerical non-compliance.

In the context of the locality and the assessed level of impact to surrounding development resulting from the proposed variation, it would be unreasonable for strict compliance to be enforced.

The non-compliance is not considered to result in any precedents for future development within the locality or the broader LGA.

It is concluded that the variation to the Minimum Subdivision Lot Size development standard under clause 4.1 of the MLEP is well founded as compliance with the standard is both unreasonable and unnecessary in the unique circumstances of this case.