



Manentia
Ubicumque

BYRON BAY PLANNING & PROPERTY CONSULTANTS

Chris Lonergan – Town Planner, Design, BASIX, Landscaping, Ecology, Bushfire Assessment.

Email – chris@byronbayplanning.com.au

Sumarah Ramsay - MPlA, Master Urban & Regional Planning – Urban Planner, DA Project Management, Subdivision, Urban Design, Post Consent Documentation.

Email – sumarah@byronbayplanning.com.au

5/130 Jonson St. Byron Bay P.O. Box 2585 Byron Bay NSW 2481 Australia

www.byronbayplanning.com.au

Ph. (02)66809255

General Manager
Richmond Valley Councils 10 Graham Pl. Casino 2470
Ph 66600300
Email council@richmondvalley.nsw.com.au

Additional Information PAN- 420987 DA 2024/0132 Dual Occupancy & Request to vary a development standard Lot 9 DP 755625 No 156 Ainsworth Rd. Monogogarrie

Further to your letter of the 22nd March 2024.

* The BASIX is currently being amended and will be uploaded to the Portal.

* In relation to the request to vary a development standard, the matters required to be addressed in the Standard Template, have all been addressed within the 4.6 Variation Chapters of the SEE.

Despite this, we now also provide the following Clause 4.6 request, in the requested format.

Clause 4.2B(2)(a) of the Richmond Valley Local Environmental Plan 2012 specifies via the LEP Lot Size Map LSZ_002 AB 40ha., sets 40ha. to achieve a Dwelling and or Dual Occupancy.

The subject property has an area of 39.15 hectares, being only a 3.3% departure from the Statutory Minimum.

This specification of a Minimum Allotment Size within Clause 4.2B(2)(a) of the Richmond Valley Local Environmental Plan 2012 is a Development Standard.

Clause 4.6 of the LEP 2012 specifies circumstances under which "Exceptions to development standards" can be achieved. These Exemption provisions are invoked within the Planning Report.

Address: Lot 9 DP 755625 No 156 Ainsworth Rd. Monogogarrie

Date: 27/03/2024

Site and proposed development

1. Describe the site.

Lot 9 DP 755625, No 156 Ainsworth Road, Monogogarrie has an area of 39.15 hectares, is located on the northern side of Ainsworth Rd., and is currently vacant land which is partly cleared, and contains an existing access road leading up to the cleared area where two dwellings are proposed.

2. Describe the proposed development.

This report is to accompany a Development Application for the proposed construction of two Detached Dual Occupancy Dwellings.

Access to the site is from the existing central southern driveway off Ainsworth Road, where sight distances are good.

The two dwellings are to be of slab on ground, brick construction, with colorbond roofs.

The dwellings will be setback 300m from Ainsworth Road, and 53m from the western boundary on an existing cleared and gently sloping section of the site, with their floor levels being 86.4m AHD and 84.2m AHD respectively, placing them well clear of flood impact.

3. What is the environmental planning instrument/s you are seeking to vary?

Please identify the relevant Local Environmental Plan or State Environmental Planning Policy that you seek to vary.

Clause 4.2B(2)(a) of the Richmond Valley Local Environmental Plan 2012 specifies via the LEP Lot Size Map LSZ_002 AB 40ha., sets 40ha. to achieve a Dwelling and or Dual Occupancy.

The subject property has an area of 39.15 hectares, being only a 3.3% departure from the Statutory Minimum.



This specification of a Minimum Allotment Size within Clause 4.2B(2)(a) of the Richmond Valley Local Environmental Plan 2012 is a Development Standard.
Clause 4.6 of the LEP 2012 specifies circumstances under which “Exceptions to development standards” can be achieved. These Exemption provisions are invoked within the Planning Report.

4. What is the site’s zoning?

Please identify the land use zone that applies to the site.

The property is Zoned RU1 Primary Production under the provisions of Richmond Valley Local Environmental Plan 2012.

5. Identify the development standard to be varied.

Please identify the name of the development standard being varied (for example, minimum lot size, floor space ratio, height of building), its relevant environmental planning instrument clause and the objectives of the development standard.

Clause 4.2B(2)(a) of the Richmond Valley Local Environmental Plan 2012 specifies via the LEP Lot Size Map LSZ_002 AB 40ha., sets 40ha. to achieve a Dwelling and or Dual Occupancy. The subject property has an area of 39.15 hectares, being only a 3.3% departure from the Statutory Minimum.

This specification of a Minimum Allotment Size within Clause 4.2B(2)(a) of the Richmond Valley Local Environmental Plan 2012 is a Development Standard.
Clause 4.6 of the LEP 2012 specifies circumstances under which “Exceptions to development standards” can be achieved. These Exemption provisions are invoked within the Planning Report.

6. Identify the type of development standard.

Please identify if the development standard you are seeking to vary is numeric or non-numeric. For more guidance, see Part A, Chapter 1.3 of this guide.

Numeric. Minimum Allotment Size Clause 4.2B(2)(a) of the Richmond Valley Local Environmental Plan 2012

7. What is the numeric value of the development standard in the environmental planning instrument?

This should be specific and address all non-compliance. Please see the relevant environmental planning instrument to determine the numeric value of the development standard for your site.

40ha.

8. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

Clause 4.2B(2)(a) of the Richmond Valley Local Environmental Plan 2012 specifies via the LEP Lot Size Map,LSZ_002 AB, that the property is located within an area requiring a 40ha. allotment size to achieve approval by Council for the construction of Dual Occupancy Dwellings. The subject property has an area of 33.67ha.

This specification of a Minimum Allotment Size under Clause 4.2B(2)(a) is a Development Standard as defined by Section 1.4 of the EPA Act.

The subject property at 39.15ha., represents only a 3.3% departure from the 40ha. Development Standard, and as such the variation sought will achieve a sensible use of otherwise sterilised land.

9. Visual representation of the proposed variation (if relevant)

If relevant, provide a diagram or image showing the proposed variation.

Property blends into the existing settlement pattern of the area and the dwellings will not be visible from the road.



Justification for the proposed variation

10. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

There are 5 common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary (items a to e). An applicant must satisfy at least one. This list is not exhaustive – there may be other ways available.

a) Are the objectives of the development standard achieved notwithstanding the non-compliance?

Clause 4.2B(2)(a) of the Richmond Valley Local Environmental Plan 2012 specifies via the LEP Lot Size Map, LSZ_002 AB, that the property is located within an area requiring a 40ha. allotment size to achieve approval by Council for the construction of Dual Occupancy Dwellings. The subject property has an area of 33.67ha.

This specification of a Minimum Allotment Size under Clause 4.2B(2)(a) is a Development Standard as defined by Section 1.4 of the EPA Act.

The subject property at 39.15ha., represents only a 3.3% departure from the 40ha. Development Standard, and as such the variation sought will achieve a sensible use of otherwise sterilised land.

In *Strathfield v Poynting, Young* CJ held that "**The dichotomy between a development standard and an absolute prohibition provides a valuable guideline as long as it is remembered that a development standard may contain expressly or implied some sort of prohibition. However the sort of prohibition involved is a prohibition on the extent of development, not as a prohibition as to whether development is possible at all.**"

Conclusion: Although Clause 4.2B(2)(a) contains an implied prohibition in relation to "area", there is no specific prohibition of this type of development contained in any part of the Richmond Valley L.E.P. 2012.

As such the provisions of Clause 4.2B(2)(a) may be utilised to provide Council, or the Land & Environment Court, with the power to grant this consent for the proposed Dual Occupancy Dwellings, despite its departure from the "area" development standard, and despite the implied prohibition contained in Clause 4.2B(2)(a), which based on the Judgement of Young JC in "Poynting", remains Development Standards".

The underlying object or purpose of the standard is shown to be one of permitting Rural dwellings, yet maintaining a perceived level of agricultural production potential, environmental protection, and rural amenity by setting a minimum Lot Size.

With the improved environmental and long land management outcomes which will be achieved by recognising this large parcel as being suited to the placement of two dwellings, it can achieve a settlement pattern commensurate with that sought by Clause 4.2B(2)(a) of the Richmond Valley Local Environmental Plan 2012, which specifies via the LEP Lot Size Map, that the property is located within an area requiring a 40ha. allotment size to achieve Two Dwellings.

The subject property at 39.15ha., represents only a 3.3% departure from the 40ha. Development Standard, and as such the variation sought will achieve a sensible use of otherwise sterilised land, and it will result in a development which will blend into the planned settlement pattern of the area, and thus the underlying purpose of the objective is met.

b) Are the underlying objectives or purpose of the development standard not relevant to the development?

The underlying object or purpose of the standard is shown to be one of permitting Rural dwellings, yet maintaining a perceived level of agricultural production potential, environmental protection, and rural amenity by setting a minimum Lot Size.

With the improved environmental and long land management outcomes which will be achieved by recognising this large parcel as being suited to the placement of two dwellings, it can achieve a settlement pattern commensurate with that sought by Clause 4.2B(2)(a) of the Richmond Valley Local Environmental Plan 2012, which specifies via the LEP Lot Size Map, that the property is located within an area requiring a 40ha. allotment size to achieve Two Dwellings.



The subject property at 39.15ha., represents only a 3.3% departure from the 40ha. Development Standard, and as such the variation sought will achieve a sensible use of otherwise sterilised land, and it will result in a development which will blend into the planned settlement pattern of the area, and thus the underlying purpose of the objective is met.

On this basis the underlying objectives and purpose of the Development Standard remain relevant, and the testing of this proposal against the objectives of the Standard shows that compliance is still achieved, despite the minor 3.3% departure request.

c) Would the underlying objective or purpose be defeated or thwarted if compliance was required?

The preceding SEE assessment, which includes the testing of the Development Standard Variation, and that of the development against the primary objectives of the EPA Act, shows that the variation of the development standard is consistent with the aims of the State Policy, and shows that compliance with the development standard would tend to hinder the attainment of the objects specified in section 1.3 of the EP&A Act.

d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?

Based on the unique circumstances of the case, there is minimal risk of this variation of the standard being precedential. As such this approval will not prejudice the proper future planning of the area, and can only be considered as achieving an outcome which promotes the appropriate agricultural and environmental development of already divided farm land.

e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?

The SEE report shows that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, particularly as this large 39.15ha allotment is within 3.3% of being compliant.

In addition to this, plantings are proposed to achieve radiant heat buffers about the fringe of the APZ.

This positive outcome would not be achieved if the Development Standard was not varied.

These additional plantings will broaden the habitat base of the area, as well as enable weed management to be effected within the APZ of this occupied property. As such not to vary the Standard would result in the retention of a sterilised allotment which would not promote land use productivity, and which could have negative environmental and social outcomes.

The economic and social flow on from this is important, and encouraging the dwelling use of this large vacant allotment is supported by the provisions of Clause 4.2B(2)(a) of the Richmond Valley LEP.

On this basis a blending development will result, with an improved local environment, and better utilisation of a large RU1 zoned land parcel, and therefore strict application of the standard cannot be seen to be reasonable, or necessary.

11. Are there sufficient environmental planning grounds to justify contravening the development standard?

Note: Environmental planning grounds are matters that relate to the subject matter, scope and purpose of the EP&A Act including the Act's objects (see Part A, Chapter 2.6 of this guide). They must relate to the aspect of the proposed development that contravenes the development



standard and not simply promote the benefits of the development as a whole. You must provide substantive justification as to why the contravening the development standard is acceptable.

The proposed Two Dwelling Houses will not result in any significant alteration to the existing situation as there will be :-

No loss of agricultural land, only an improvement in long term potential by permitting the property to achieve better site and weed management through it being permanently occupied, and

No precedent will be set as all that is proposed is a formalisation of an existing allotment of land, which is only marginally below the 40ha. Development standard, by only 3.3%, and meets landuse, and future land management needs, whilst maintaining rural amenity and Zone Objectives, as well as the landuse potential of the site.

The proposed dwellings are to occupy only a small already cleared area within the subject 39.15ha site. Additional native Plantings are proposed to achieve radiant heat buffers about the fringe of the APZ, and privacy between the dwellings.

This positive outcome would not be achieved if the Development Standard was not varied.

Based on the preceding assessments, it can be concluded that the variation requested to the Development Standard is incidental, and achieves positive outcomes in terms of land management and optimisation of usage within environmental management parameters.

As such the strict application of the development standard is unreasonable in this regard. In addition to this, the benefits of the proposed variation far outweigh the minor nature of the variation in terms of the Objective of the Development Standard.

The proposed Two Dwelling Houses will thus not result in any alteration to the existing character of the area, nor will they reduce the viability of the existing farming operations in the area.

To the contrary it will ensure that the long term viability and security of the allotment, and ensure that long term farming viability is improved through the creation of better managed land, particularly in terms of weed management and fire control.

Also the environmental integrity of the area will be enhanced by the planting of native vegetation corridors as proposed.

On this basis, the objectives of the standard are better met by its variation.

It is in the interests of good economic management, environmental management, and achieving effective utilisation of rural land resources, that this proposed Two Dwelling Houses need be approved.

This will enable long term planning to be effected realistically on a more secure base, thus ensuring the long term viability of the site in terms of it being a manageable unit.

The proposed design is thus, in terms of farm management, rural land utilisation, and effective land management - in particular to achieve improved rural amenity, habitat management, and improved land productivity, **in the greater public interest.**

12. Is there any other relevant information relating to justifying a variation of the development standard? (If required)

Please provide any other information that you feel is relevant in justifying your proposed variation to the development standard.

The Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie, are located within already cleared land.

The site is screened by existing vegetation to adjacent properties and adjacent roads such that the development is visually isolated and softened.

The landuse will thus not cause any adverse environmental impact, and the pockets of native regeneration will continue, with weed management implemented to optimise the integrity of the landscape plantings about the site.

Thus the propensity for this development to impact on the amenity of the area is low.

Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie



As previously stated, the building and landuse areas are well setback from all boundaries, and this spatial separation ensures that there will be no adverse impact on existing and planned habitat areas. All waste is to be separated on site for composting, or collection and recycling. It is therefore considered that the proposed development will have no adverse impact on the environment of the area.

The site was extensively disturbed by vegetation clearance during the early part of this century when timber was extracted from the area. This was followed by decades of stock grazing resulting in the loss of all the original forest, and maintaining the area as pasture.

The landscape plantings about the site will not be affected by the proposed spatially isolated use which is to occur on areas of the site that have remained cleared or have been cleared.

Thus the site of the proposed "Dual Occupancy" will not compromise existing vegetation about the site, and as such their habitat potential is to remain unchanged.

On this basis, the landuse, site layout, and design character will remain similar to that already approved, yet provides better site management outcomes.

By approving the design, the "Dual Occupancy" maintains the character of the area.

It is considered that the proposed Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie, with retention of native landscaping, planting of additional landscaping, combined with the sensitive design, in a visually isolated section of the property, will have a minimal impact on the environment and visual amenity of the area.

In addition, the proposal will also satisfy a genuine need for this type of low scale compatible development in the Richmond Valley Shire.

It is hoped that this application can now be approved expeditiously.

CHRIS LONERGAN. B.A. (Town Planning UNE)

27th. March 2024.