



**ANTHONY
DAINTITH**
TOWN PLANNING

[REDACTED]

Our Ref: 2022-101

6 December 2021

Mid Western Regional Council

Dear Sir/Madam

CLAUSE 4.6 - EXCEPTIONS TO DEVELOPMENT STANDARDS

Address: [REDACTED].

Proposal: Dual Occupancy.

The following is provided in support of a Development Application sought for a dual occupancy development at [REDACTED]. The report has been prepared with reference to the development plans prepared by Rawson Homes.

4.6 Exceptions to development standards

- (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.*
- (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.*
- (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.*

- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must 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 Secretary before granting concurrence.
- (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 E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 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.

Note. When this Plan was made it did not include all of these zones.

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4,
 - (ca) clause 6.1, 6.2, 6.3, 7.7, 7.8 or 7.11.

Comments:

A variation to the minimum lot size for a dual occupancy development on the subject land is sought for this proposal (i.e. 800m² development standard – the subject land has an area of 796.7m²).

Following provides justification for the support of the proposed variation to the development standard.

Is the Requirement a Development Standard?

Clause 4.1A of the *Mid Western Local Environmental Plan 2012 (LEP)* contains a development standard that allows for a dual occupancy development on the subject site.

A written justification for the proposed variation to the minimum lot size for a dual occupancy is required in accordance with Clause 4.6 of the LEP.

The objectives of Clause 4.6 'Exceptions to Development Standards' are as follows:

- (a) *To provide an appropriate degree of flexibility in applying certain development standards to particular development; and*
- (b) *To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 allows for the contravention of a development standard with approval of the consent authority.

A development standard is defined under the *Environmental Planning and Assessment Act, 1979* as:

"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"

Subclause (3) requires the consent authority to consider a written request from the applicant that demonstrates:

- 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.*

Subclause (4) requires the consent authority to be satisfied that:

- i) *The applicants written request has adequately addressed the matters required to be demonstrated by subclause (3); and*
- ii) *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Clause 4.1A is a development standard.

Extent of Variation to the standard

The subject land has an area of 796.7m² (the development standard under Clause 4.1A is 800m²).

The development therefore results in a minor variation to minimum lot size for a dual occupancy development of 3.3m² or 0.4125%.

Is the Requirement a Development Standard and does subclause 8 apply?

Clause 4.1A of the *Mid Western Regional Local Environmental Plan 2014* contains a development standard that allows for a dual occupancy development on the subject site. Clause 4.1A states:

4.1A Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing and residential flat buildings

- (1) *The objective of this clause is to achieve planned residential density in certain zones.*
- (2) *This clause applies to the following land—*
 - (a) **land within Zone R1 General Residential,**
 - (b) *land within Zone R3 Medium Density Residential,*
 - (c) *land in Rylstone or Kandos that is within Zone RU5 Village,*
 - (d) *for the purposes of a manor house, any land that is within Zone RU5 Village.*
- (3) *Despite any other provision of this plan, development consent may be granted to development on land to which this clause applies—*
 - (a) *for the purposes of a dual occupancy (attached), if the area of the lot is equal to or greater than 600 square metres, or*
 - (b) **for the purpose of a dual occupancy (detached), if the area of the lot is equal to or greater than 800 square metres, or**
 - (c) *for the purposes of multi dwelling housing, if the area of the lot is equal to or greater than 1,200 square metres, or*
 - (d) *for the purposes of a residential flat building, if the area of the lot is equal to or greater than 1,200 square metres, or*
 - (e) *for the purposes of a manor house, if the area of the lot is equal to or greater than 1,200 square metres.*

Clause 4.1A is a development standard.

Subclause 8 does not apply to the subject development.

What is the underlying object or purpose of the standard?

The objective of Clause 4.1A:

(1) *The objective of this clause is to achieve planned residential density in certain zones.*

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The development standard is considered unreasonable in the circumstances due to the following reasons:

- The development remains consistent with the objectives of the zone.
- The development is consistent with the provisions of the Mid Western Regional Development Control Plan 2013 (there are no other non-compliances being sought).
- There is higher density accommodation at 70A Lawson Street and 91-93 Lewis Street that are adjoining or adjacent to the subject land.
- The neighbouring lots to the south along Meares Street are on smaller residential style allotments.
- The surrounding land is transitioning towards a higher residential density.
- There are a number of sites within the vicinity of the site developed for higher residential housing.
- The variation sought is relatively minor (0.4125%).
- The development standard unreasonably restricts a positive development outcome by inhibiting a variety of housing types and densities to be established in the area.
- The standard will unreasonably prevent additional housing supply to be provided into the immediate vicinity of the hospital and close to sporting fields.
- The standard unreasonably restricts effective utilisation of the land to achieve the objectives of the zone.
- The standard unreasonably restricts the maximisation of infill development and utilisation of existing infrastructure resources.
- The standard will unnecessarily restrict the achievement of highest and best yield of the land resource.

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

Given the transitional nature of the area from low density to medium-higher density residential, the design proposes an appropriate development form that is reflective of the desired future character of the area and responds to the constraints and opportunities of this site.

The development in its current form results in a better urban planning outcome for the following reasons:

- The development complies with the provisions of the Mid Western Regional Development Control Plan 2013.
- There are a number of higher density housing developments within the vicinity of the subject land.
- Each dwelling is provided with an appropriate level of amenity.

On the basis of the discussion in this report and the points above, there are sufficient environmental planning grounds to justify the contravention of the development standard.

Will the proposed development be in the public interest because it is consistent with objectives of the particular standard and the objectives for development within the zone in which the development proposed is to be carried out?

The proposed development maintains compliance with the objectives of the R1 General Residential zone as detailed below:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

As detailed throughout this report, the proposed development can generally be shown to be consistent with the relevant objectives of the zone.

- The development meets the housing needs of the community;
- The development provides a variety of housing types and densities not readily available in Mudgee.

The site is located within an area that has and is currently transitioning to a higher residential density. The proposed development is consistent with the desired future area and zoning under Mid Western Regional LEP and DCP.

It is therefore considered that the development is capable of achieving R1 General Residential Zone objectives.

Whether or not non-compliance with the development standard raises any matter of significance for State or Regional environmental planning?

The variation to the lot size for a dual occupancy development will not raise any matter of significance for State or regional environmental planning.

The public benefit of maintaining the development standard

There is no public benefit of maintaining the development standard in this instance due to the minor extent of the variation and the similar development within the vicinity of the site. This report has determined that the variation to the planning control will result in an outcome that is acceptable on this site.

Any other matters required to be taken into consideration by the Director General before granting concurrence?

There are no other matters that are required to be taken into consideration.

Should you have any questions with respect to this matter, please contact the office on 63624523.

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