

Clause 4.6 Variation Request Liverpool Local Environmental Plan 2008

**Development Application
DA-24/2017**

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1. Introduction

1.1 Purpose of Document

The purpose of this document is to formally request a variation to a development standard pursuant to Clause 4.6 of Liverpool Local Environmental Plan 2008.

A variation is sought to **Clause 4.1 Minimum subdivision lot size** and **Clause 4.1AA Minimum subdivision lot size for community title schemes**.

This request to vary a development standard has been prepared to justify the contravention to the above-mentioned development standards and has been prepared in accordance with the considerations prescribed by Clause 4.6(3) of Liverpool Local Environmental Plan 2008.

This request has been prepared with the guidance of the Department of Planning and Environment's, *Varying Development Standards: A Guide* (August 2011). This request has also been prepared to consider the planning principles and findings of the following judgements in the NSW Land and Environment Court:

- *Wehbe v Pittwater Council [2007] NSWLEC 827*
- *Four2Five Pty LTD v Ashfield Council [2015] NSWLEC 90*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*

1.2 Development Application

This written request to vary a development standard has been prepared to support Development Application DA-24/2017.

Mirvac Homes (NSW) Pty Ltd (**Mirvac**) lodged development Application DA-24/2017 on 23 January 2017. The Development Application is seeking development consent for a staged subdivision.

Stage One comprises:

- Torrens Title subdivision of one lot into three lots identified as Super Lots 1, 2 and 3.

Stage Two comprises:

- Bulk earthworks across the whole of Super Lots 1 and 2; and where drainage works will be constructed in Super Lot 3, including:
 - Site remediation works;
 - Cut and fill; and
 - Import and placement of VENM.
- Construction of roads, drainage, supporting infrastructure and retaining walls, and
- Community Title subdivision of Super Lot 2 into nineteen (19) lots and roads. All roads and drainage reserves will be dedicated to Council while the remaining seventeen (17) lots will be community lots managed under a community management scheme.

Stage One subdivision seeks development consent for the creation of three superlots:

- Proposed Lot 1 1.722ha
- Proposed Lot 2 8.399ha
- Proposed Lot 3 12.15ha

Stage One subdivision creates Super Lot 2 that is part zoned R3 Medium Density Residential and RE2 Private Recreation. The portion of proposed Lot 2 that is zoned **RE2 Private Recreation is 0.41ha.**

This portion of proposed Lot 2 (Stage 1) **does not comply with the 10,000sqm minimum lot size prescribed by Clause 4.1 Minimum lot size.**

Stage Two subdivision works seeks to subdivide Super Lot 2 into 17 Community Title lots. One of these community title lots is proposed Lot 16.

Proposed **Lot 16 has an area of 3779.2smq.** Proposed Lot 16 is part zoned R3 Medium Density Residential and RE2 Private Recreation. The portion of proposed Lot 16 that is zoned RE2 Private Recreation has an area of 3,185sqm.

Proposed Lot 16 (Stage 2) **does not comply with Clause 4.1AA Minimum subdivision lot size for community title schemes.**

1.2.1 Community Title Subdivision

The proposed development is seeking consent for the creation of the proposed lots within Stage 2 as part of a Community Title Scheme.

The *Community Land Development Act 1989 No 201* defines a community scheme as:

- a) the manner of subdivision of land by a community plan, and*
- b) if land in the community plan is subdivided by a precinct plan—the manner of subdivision of the land by the precinct plan, and*
- c) the manner of subdivision of land in the community plan, or of land in such a precinct plan, by a neighbourhood plan or a strata plan, and*
- d) the proposals in any related development contract, and*
- e) the rights conferred, and the obligations imposed, by or under this Act, the Community Land Management Act 1989 and the Strata Schemes Development Act 2015 in relation to the community association, its community property, the subsidiary schemes and persons having interests in, or occupying, development lots and lots in the subsidiary schemes.*

The Community Title Scheme legislation does not allow additional lands to be added to the scheme after it has been created and has commenced. This is a notable difference to a traditional Torrens Title subdivision.

Mirvac is proposing a Community Title Scheme subdivision to adhere to Councils request for this type of subdivision.

The rationale behind this request from Council was so that the Community Association could manage the owners obligations under the Long Term Environmental Plan (LTEMP) and not the Council.

Mirvac had originally proposed Torrens Title subdivision but subsequently amended the proposal to satisfy Councils request.

1.3 Development Site

The site is identified as 146 Newbridge Road, Moorebank.

The site is located adjacent to the Georges River to the east, Newbridge Road to the north and the Georges Fair residential estate to the west. Land to the east of the Georges River is located within the Canterbury-Bankstown Local Government Area and is characterised as recreational open space.

1.4 Strategic Planning Context

The development application is seeking the creation of lots that will facilitate future residential development of the Moorebank East precinct that is akin to Councils strategic planning for the area.

Future residential development of the proposed lots will be subject to separate development applications.

No residential development apart from roads (that are permissible within the RE2 zone) is being sought by this application.

1.4.1 Planning Proposal

It should be noted that Council is concurrently considering a Planning Proposal (RZ-1/2019) that seeks a zone boundary adjustment to extend the R3 Medium Density

This Planning Proposal seeks a zone boundary adjustment to extend the R3 Medium Density Residential Zone boundary southwards to incorporate a component of the development site that is zoned RE2 Private Recreation.

The zone boundary adjustment is approximate 0.41 ha of land currently zoned as RE2 Private Recreation.

The context of the RE2 Private Recreation zoned land included in the Planning Proposal and within the boundaries of Proposed Lot 2 (stage 1 subdivision) and Proposed Lot 16 (stage 2 subdivision) is provided in Figures 1 and 2 below.

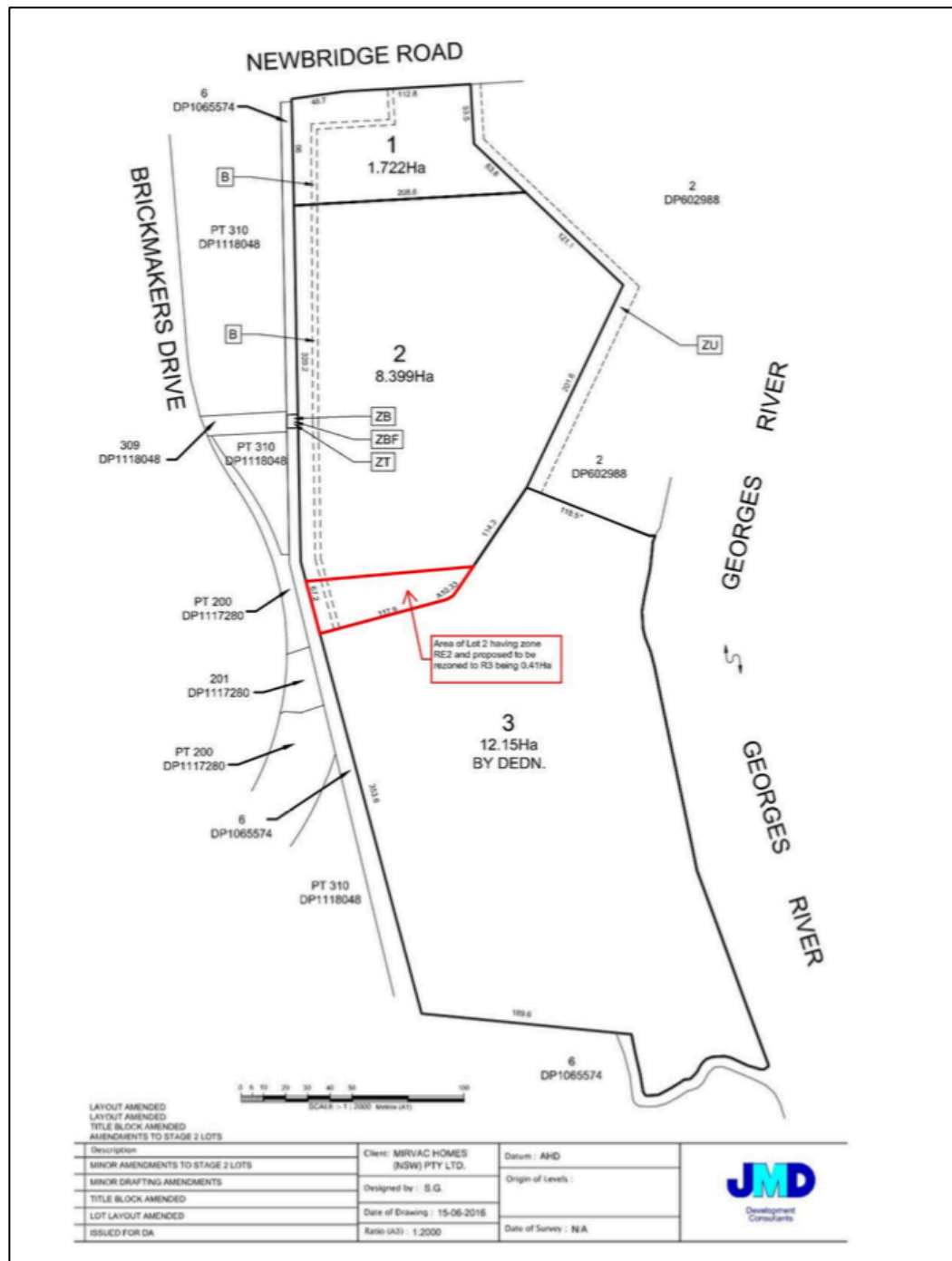


Figure 1: Area of RE2 zoned land within Proposed Lot 2 (Stage 1)

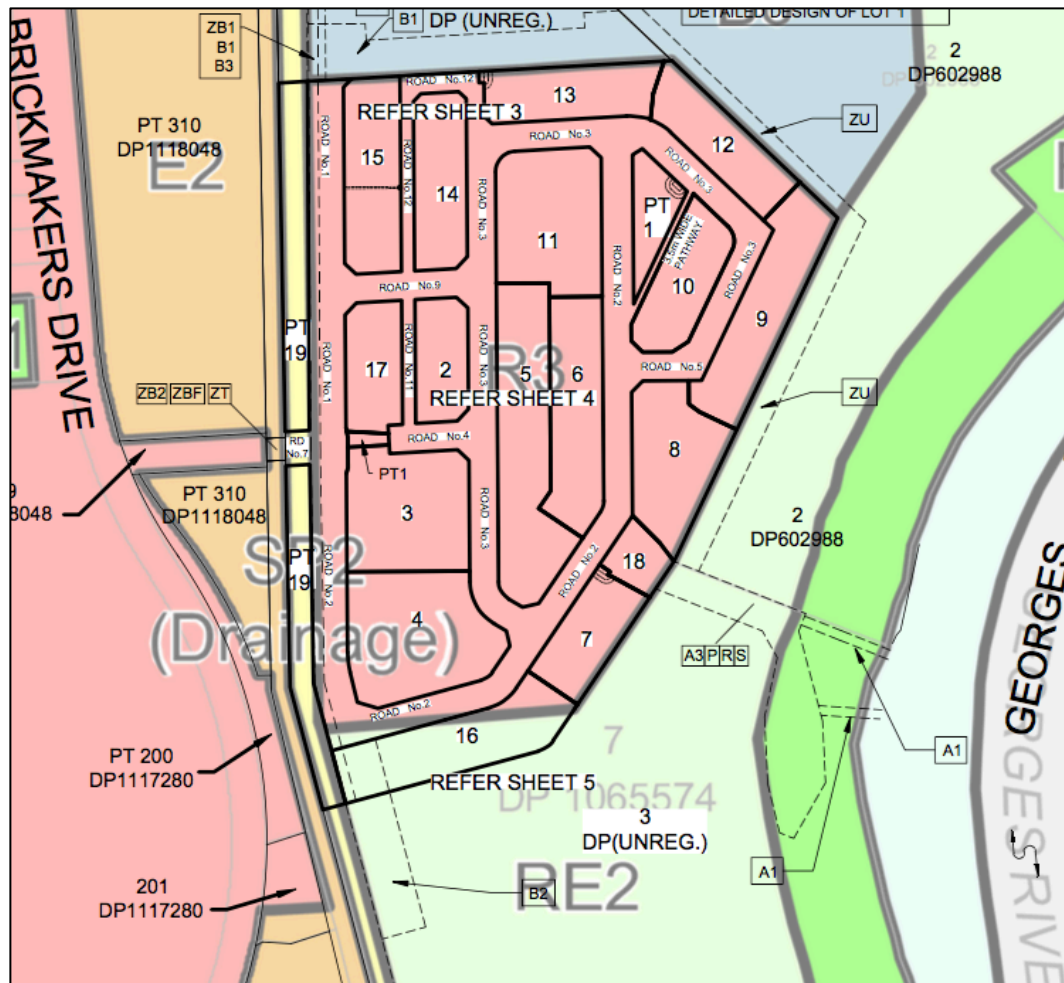


Figure 2: Area of RE2 zoned land within Proposed Lot 16 (Stage 2)

The zone boundary adjustment being proposed (under RZ-1/2019) will facilitate the future subdivision of the R3 Medium Density Residential area and allow for nine additional residential allotments on the land that would otherwise remain unused within the Moorebank Cove Residential Estate.

A masterplan for future residential subdivision has been provided and supports Development Application DA-24/2017. This masterplan illustrates indicative future residential lots.

1.5 Variation Summary

Table 1 and Table 2 below provide a summary of the variation within the statutory context of the development application.

Table 1: Variation Summary to Clause 4.1 Minimum Subdivision Lot Size

Variation Summary Requirements	Comments
Environmental Planning Instrument	Liverpool Local Environmental Plan 2008
Land Use Zoning	Land affected by variation is zoned RE2 Private Recreation
Objectives of the Zone	<ul style="list-style-type: none"> <i>To enable land to be used for private open space or recreational purposes.</i> <i>To provide a range of recreational settings and activities and compatible land uses.</i> <i>To protect and enhance the natural environment for recreational purposes.</i> <i>To enable land uses that are compatible with, and complimentary to, recreational uses.</i>
Development Standard to be varied	Minimum subdivision lot size
Development Standard Clause	Clause 4.1
Development Standard Objective	<ul style="list-style-type: none"> <i>a) to ensure that lot sizes are consistent with the desired residential density for different locations,</i> <i>b) to ensure that lot sizes are able to accommodate development that is suitable for its purpose and consistent with relevant development controls,</i> <i>c) to prevent fragmentation of land which would prevent the achievement of the extent of development and nature of uses envisioned for particular locations,</i> <i>d) to minimise traffic impacts resulting from any increase in the number of lots on classified roads,</i> <i>e) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,</i> <i>f) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,</i> <i>g) to ensure that lot sizes allow buildings to be sited to protect natural or cultural features including heritage items and retain special features such as trees and views.</i>
Development Standard Provisions	<p>Clause 4.1 (2) and (3) prescribes:</p> <p><i>This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.</i></p> <p><i>The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.</i></p>
Numeric Requirements	Lot Size Map identifies a 10,000sqm minimum lot size
Proposed by the development application	Proposed Lot 2 that has an area of 8.399ha (0.41ha of the site is zoned RE2 Private Recreation and is subject to a minimum lot size of 10,000sqm)

Table 2: Variation Summary to Clause 4.1AA Minimum Subdivision Lot Size for community title schemes

Variation Summary Requirements	Comments
Environmental Planning Instrument	Liverpool Local Environmental Plan 2008
Land Use Zoning	Land affected by variation is zoned RE2 Private Recreation
Objectives of the Zone	<ul style="list-style-type: none"> <i>To enable land to be used for private open space or recreational purposes.</i> <i>To provide a range of recreational settings and activities and compatible land uses.</i> <i>To protect and enhance the natural environment for recreational purposes.</i> <i>To enable land uses that are compatible with, and complimentary to, recreational uses.</i>
Development Standard to be varied	Minimum Subdivision lot size for community title schemes
Development Standard Clause	Clause 4.1 AA
Development Standard Objective	<p><i>a) to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements,</i></p> <p><i>b) to ensure that lot sizes in community title schemes are consistent with the desired residential density for different locations,</i></p> <p><i>c) to ensure that lot sizes in community title schemes are able to accommodate development that is suitable for its purpose and consistent with relevant development controls,</i></p> <p><i>d) to prevent fragmentation of land that would prevent the achievement of the extent of development and nature of uses envisioned for particular locations,</i></p> <p><i>e) to prevent an increased traffic and safety impact as a result of increased lots on classified roads,</i></p> <p><i>f) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,</i></p> <p><i>g) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,</i></p> <p><i>h) to ensure that lot sizes in community title schemes allow buildings to be sited to protect natural or cultural features including heritage items and retain special features such as trees and views.</i></p>
Development Standard Provisions	<p>Clause 4.1AA(3) prescribes</p> <p>The size of any lot resulting from a subdivision of land to which this clause applies (other than any lot comprising association property within the meaning of the <i>Community Land Development Act 1989</i>) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.</p>
Numeric Requirements	Lot Size Map identifies a 10,000sqm minimum lot size
Proposed by the development application	Proposed Lot 16 in Stage 2 of the proposed subdivision has a lot size of 3779.2sqm.

2. Clause 4.6 Exception to development standards –

Variation to Minimum Subdivision Lot Size (Clause 4.1)

The objectives of Clause 4.6 Exceptions to development standards prescribes:

- 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.*

The following section provides justification for the contravention of the development standard (**Clause 4.1 Minimum Subdivision lot size**) by demonstrating:

- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a)), and*
- that there are sufficient environmental planning grounds to justify contravening the development standard Clause 4.6(3)(b).*

2.1 What is the name of the environmental planning instrument that applies to the land?

The environmental planning instrument applying the land is Liverpool Local Environmental Plan 2008 (LLEP 2008).

2.2 What is the zoning of the land and what are the objectives of the zone?

The subject site is part zoned B6 Business Enterprise, R3 Medium Density Residential and RE2 Private Recreation under LLEP 2008.

Figure 3 (below) provides an extract of the zoning map from the Environmental Impact Statement (Volume 1) accompanying DA-24/2017.

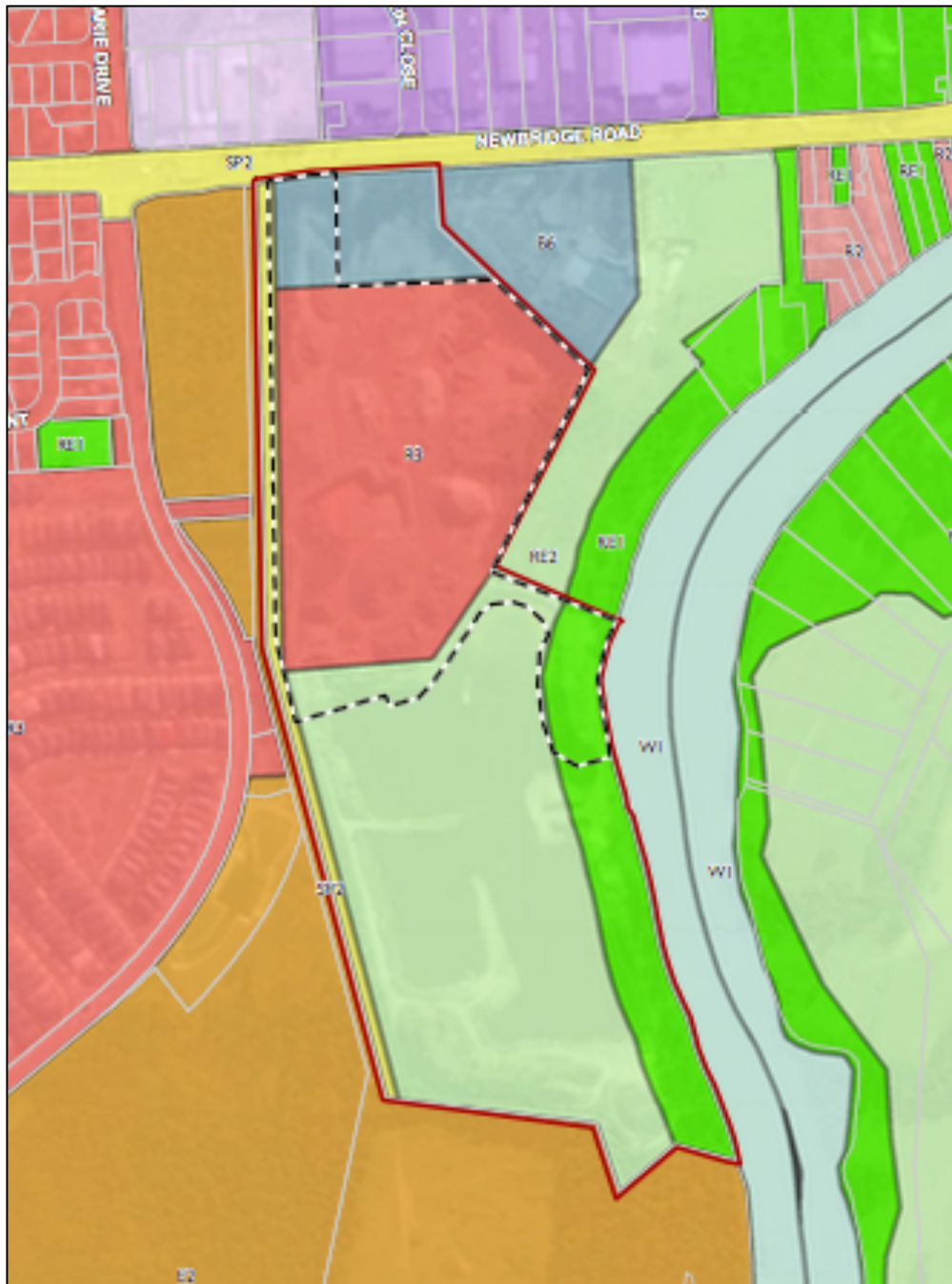


Figure 3: Extract of zoning map (EIS, Volume 1 prepared by EMM Jan 2017)

The land subject (being proposed Lot 2 created by stage 1 of the proposed subdivision) to the Clause 4.6 variation is zoned both R3 Medium Density Residential and RE2 Private Recreation under LLEP 2008.

The portion of proposed Lot 2 (Stage 1) that is zoned RE2 Private Recreation has an area of 0.41ha

The objectives of the R3 Medium Density Residential Zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*

- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To provide for a suitable visual transition between high density residential areas and lower density areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The objectives of the RE2 Private Recreation zone are as follows:

- *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.*
- *To enable land uses that are compatible with, and complimentary to, recreational uses.*

2.3 Identify the Development Standard to which this Clause 4.6 Variation applies?

Clause 4.1 Minimum Subdivision Lot Size is the development standard being varied by the development application.

Clause 4.1 (2) and (3) prescribes:

- *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*
- *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

2.4 What are the objectives of the development standard?

The objectives of Clause 4.1 Minimum subdivision lot size are:

- a) to ensure that lot sizes are consistent with the desired residential density for different locations,*
- b) to ensure that lot sizes are able to accommodate development that is suitable for its purpose and consistent with relevant development controls,*
- c) to prevent fragmentation of land which would prevent the achievement of the extent of development and nature of uses envisioned for particular locations,*
- d) to minimise traffic impacts resulting from any increase in the number of lots on classified roads,*
- e) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,*
- f) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,*
- g) to ensure that lot sizes allow buildings to be sited to protect natural or cultural features including heritage items and retain special features such as trees and views.*

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

The minimum lot size for land zoned RE2 Private Recreation prescribed under Clause 4.1 of LLEP 2008 and as shown on the Lot Size Map is 10,000sqm.

An extract of the Minimum Lot Size map referenced in Clause 4.1 applying to the site is illustrated in Figure 4 below.

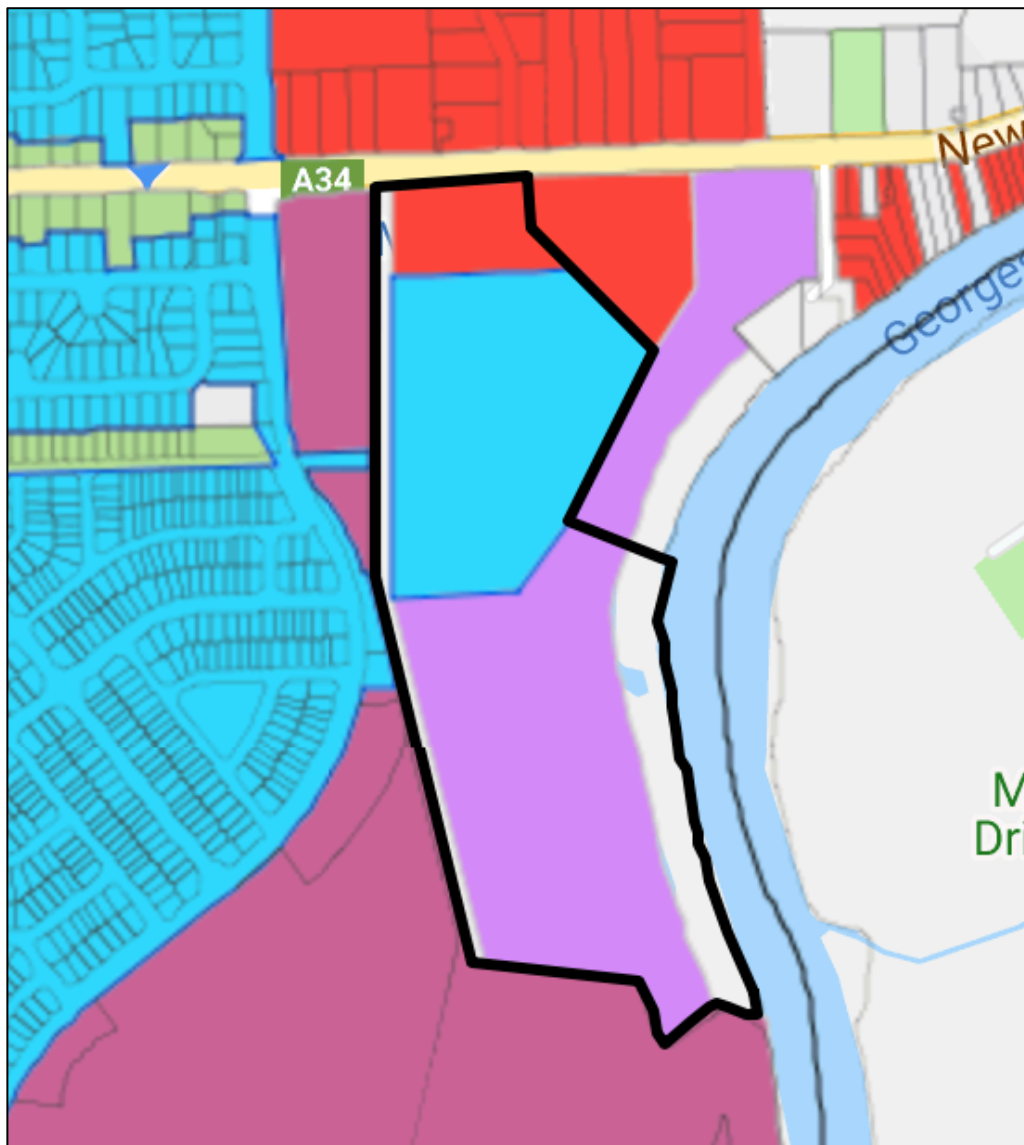


Figure 4: Extract of Minimum Lot Size map LLEP 2008

2.6 How does the proposed numeric values relate to the development standard?

Proposed Lot 2 (created in Stage 1) has a total area of 8.399ha. Part of Lot 2 is zoned RE2 Private Recreation and has an area of 0.41ha. The RE2 Private Recreation zoned portion of Lot 2 is subject to a minimum lot size of 10,000sqm.

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

The NSW Land and Environment Court in *Four2Five Pty LTD v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The court provided five tests as follows:

- Test 1: *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
- Test 2: *The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary.*
- Test 3: *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
- Test 4: *The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
- Test 5: *The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land.*

Application of the five tests set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 is provided below:

The objectives of the standard are achieved notwithstanding non-compliance with the standard.

Proposed Lot 2 (Stage 1) contravenes the development standard for minimum lot size that is prescribed by Clause 4.1 of LLEP 2008.

As noted earlier, proposed Lot 2 (created in Stage 1) has an area of 8.399ha (0.41ha of the Lot is part zoned RE2). The RE2 zoned portion of the site and is subject to a minimum lot size of 10,000sqm.

Assessment of the variation to the minimum lot size against the objectives of the Clause 4.1 is provided below:

- a) *to ensure that lot sizes are consistent with the desired residential density for different locations,*

Proposed Lot 2 (Stage 1 subdivision) and subsequently proposed Lot 16 (Stage 2 subdivision) is to facilitate future residential subdivision.

The facilitating subdivision (Stage 2) will allow for future residential subdivision that is consistent with strategic planning and direction of the Moorebank East precinct. The

structure of the Community Title legislation does not allow land to be added to the Community Title scheme following its creation.

Enabling the facilitating subdivision and the creation of super lots supports the orderly development through the commencement of earth works and subdivision preparatory works and road construction that are essential to support future residential development within the Moorebank East precinct.

The creation of the proposed super lot 2 (Stage 1) will facilitate future residential subdivision and development that is akin to the future desired residential density for the Moorebank East precinct.

It is also noted that the remaining RE2 land (being Super Lot 3) is compliant with the Minimum Lot Size controls (being 12.15Ha).

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

Proposed Lot 2 (Stage 1 subdivision) and subsequently proposed Lot 16 (Stage 2 subdivision) are to facilitate future subdivision within the Moorebank East precinct. The majority of proposed Lot 2 is zoned R3 Medium Density Residential.

Stage 2 of the proposed development illustrates how proposed Lot 2 will be subdivided in a future community title scheme to facilitate future development within the site. Development works also include earth works, site preparatory works and residential road construction.

An extract of the subdivision plan for Stage 2 with the current LLEP 2008 zoning overlay is provided in **Figure 5** below.

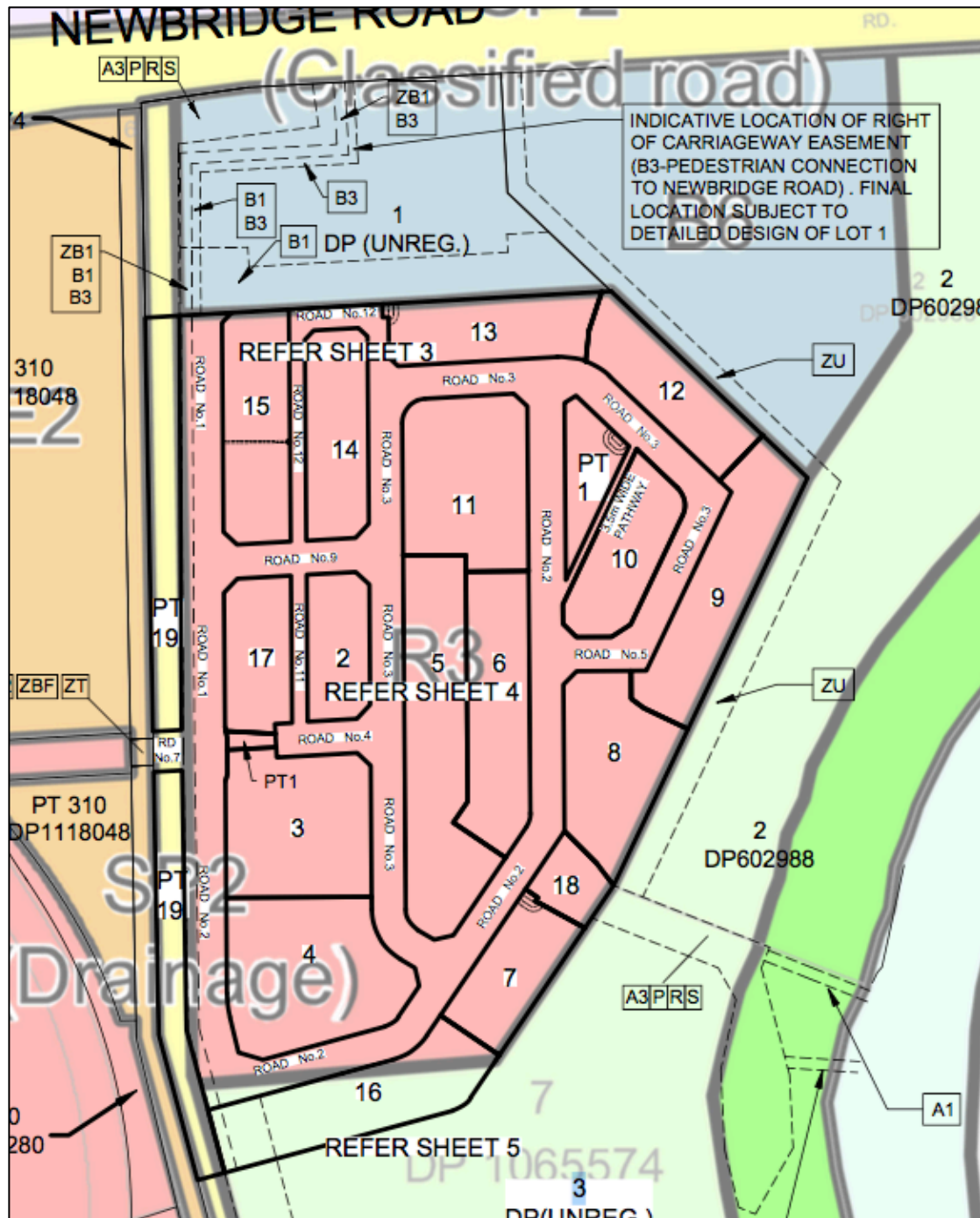


Figure 5 illustrates proposed Lot 2 (Stage 1) will facilitate future residential subdivision that is consistent with the development and density expectations for a R3 Medium Density Residential zone.

- c) to prevent fragmentation of land which would prevent the achievement of the extent of development and nature of uses envisioned for particular locations

Proposed Lot 2 is proposed as part of a Stage 1 subdivision to facilitate future development across the site in an orderly manner and to ensure a holistic approach to development that accords with Councils strategic vision and planning for the Moorebank East precinct is carried out.

Proposed Lot 2 is a facilitating lot only and will not result in land fragmentation. Rather the proposed development and the creation of proposed Lot 2 will ensure future development is carried out in accordance with Councils planning controls for this precinct.

d) to minimise traffic impacts resulting from any increase in the number of lots on classified roads,

The proposed development is for subdivision only. The development and the contravention to the minimum lot size will not result in any traffic impacts., however Traffic studies have been provided as part of DA-24/2017 noting no adverse impacts on traffic from the proposed development.

e) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,

Proposed Lot 2 will not result in any amenity impacts on neighbouring properties.

Proposed Lot 2 will facilitate future residential subdivision that is consistent with the Moorebank East precinct and enable future residential development to be carried out.

Proposed Lot 2 will not impact on the amenity or future development of Proposed Lot 3 (Stage 1 subdivision) that is currently zoned RE2 Private Recreation.

f) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,

Proposed Lot 2 (Stage 1 subdivision) and subsequently proposed Lot 16 (Stage 2 subdivision) is to facilitate future subdivision. The creation of the proposed super lots will support future residential development that will be capable of providing residential development of a suitable density and character that is consistent with the dominant R3 zoning over the site.

An indicative masterplan of future subdivision of the residential zoned portion of the site has been prepared to support the current development application to provide an indication of the future residential subdivision pattern.

The future residential development of dwellings on the proposed lots will be the subject of separate development applications.

g) to ensure that lot sizes allow buildings to be sited to protect natural or cultural features including heritage items and retain special features such as trees and views.

Proposed Lot 2 is a facilitating lot being created to enable future residential development.

The proposed lots do not impact on any natural or cultural features and does not impact on any special features. As noted in the Environmental Impact Statement accompanying the development application the site does not have any existing cultural features including heritage items or trees. Views are maintained to the Georges River in both the proposed future residential masterplan and if the land was retained as RE2 Private Recreation.

As demonstrated by all of the above, the objectives of Clause 4.1 Minimum Lot Size of LLEP 2008 are satisfied despite the contravention to the development standard.

The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary.

The underlying purpose of the development standard and prescribed minimum lot size for subdivision is to ensure that proposed lots are capable of accommodating development that the land was intended for.

As canvassed earlier, proposed Lot 2 (Stage 1) and subsequently proposed Lot 16 (Stage 2) are created to facilitate future residential subdivision that is consistent with Councils strategic planning directions for the Moorebank East precinct and is consistent with the Liverpool Development Control Plan 2008, specifically Section 2.10 Moorebank East.

Liverpool Councils long-term strategic vision for Moorebank East is to transform the Moorebank East locality along the Georges River from predominantly extractive industries to a quality natural environment that balances opportunities for sustainable development and regeneration of the Georges River foreshore.

Proposed Lot 2 is a facilitating subdivision only and is to assist in the delivery of residential development that supports Councils long term strategic vision for the precinct. The subdivision and the contravention to the development standard results in the creation of lots that will facilitate future residential development and a future private recreation development (proposed Lot 3) and in this basis compliance with the minimum lot size for subdivision is unnecessary.

It has been demonstrated through the indicative masterplan that future development that is akin to Councils long-term vision and strategic objective can still be achieved through facilitating future residential development.

The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

The portion of land that is zoned RE2 Private Recreation has to be included in the first Community Title subdivision (Stage 2) to facilitate its use within the residential development, either as future homes if the zone boundary adjustment is approved, or as open space within the Community Scheme.

Therefore if the variation is not supported the part of the land zoned RE2 would be separated from future residential development.

Compliance with the proposed minimum lot size for subdivision is unreasonable in this instance, given that the proposed lot being created is to facilitate future development.

The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

Test 4 is not applicable to the circumstances of this development application.

The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land.

Compliance with the development standard for minimum lot size of subdivision is unreasonable in this instance in considering the context of development applications and planning proposals on the site.

Development and land use within the site is undergoing transition to satisfy Councils land use objectives for the Moorebank East precinct. This has seen the cessation of the extractive industry located on the south and both planning proposals and development applications lodged with Council to integrate residential development and a future marina (Georges Cove) on proposed Lot 3 (created in Stage 1).

Proposed Lot 2 despite not satisfying minimum lot size requirements for subdivision will still allow for an appropriate balance of residential development and private recreation development to occur in the Moorebank East precinct and activation of the Georges River foreshore.

Proposed Lot 2 (and subsequently proposed Lot 16) is capable of being integrated with future residential subdivision of the remainder of facilitating lots created as part of Stage 2 as well as having no impact on the amenity or development capabilities of the RE2 zoned land located within Proposed Lot 3 (Stage 1).

Given that the proposed lot is only to facilitate future development and would not preclude future development that is not akin to the desired character of the Moorebank East precinct strict compliance with the development standard is unreasonable.

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

Incorporation of the portion of the site zoned RE2 Private Recreation within Proposed Lot 2, will allow for the creation of Proposed Lot 16 (Stage 2) that is required to be included in the first Community Title subdivision. The *Community Land Development Act* does not allow for additional land to be added after the commencement of the scheme. Therefore the contravention to the minimum lot size for subdivision is acceptable.

It is considered that there are sufficient environmental planning grounds to justify the reduction in minimum lot size for subdivision applying to proposed Lot 2. The proposed departure from the minimum lot size still ensures that the broader objective of the *Environmental Planning and Assessment Act 1979* to *promote the orderly and economic development of the land* (Clause 1.3(c)) is satisfied.

Proposed Lot 2 is being created as part of a facilitating subdivision to enable the future development of the site and delivery of future residential subdivision and development that is consistent with the overall strategic planning objectives to balance development and private recreation land uses development across the Moorebank East precinct.

The contravention will also not have any adverse impacts on the amenity of the adjoining properties. The indicative masterplan illustrates how future development on proposed Lot 16 is capable of being integrated with future residential subdivisions.

This masterplan also demonstrates that the proposed lots and future development of proposed Lot 16 (and other lots created by Stage 2) are consistent with the currently planning proposal being considered by Council that seeks a boundary adjustment of the RE2 Private Recreation zone boundary.

The portion of Proposed Lot 2 zoned RE2 Private Recreation and proposed Lot 16 is capable of supporting recreational development should the planning proposal not be supported. Proposed Lot 16 would be capable of supporting a park that could be integrated with the surrounding and future residential development that forms part of the community title subdivision scheme.

On this basis, it is considered that there are sufficient environmental planning grounds to support the variation to minimum lot size.

2.9 Is the proposed development, despite the contravention to the development standard, in the public interest?

The proposed development for subdivision despite the contravention to the minimum lot size for subdivision is acceptable and in the public interest, as the development is consistent with the objectives of the development standards (as canvassed in detail earlier) and the objectives of the RE2 zone.

The objectives of the RE2 Private Recreation zone are as follows:

- *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.*
- *To enable land uses that are compatible with, and complimentary to, recreational uses.*

The land use zoning table permits the following land uses with development consent:

Animal boarding or training establishments; Aquaculture; Boat sheds; Building identification signs; Business identification signs; Camping grounds; Car parks; Caravan parks; Centre-based child care facilities; Charter and tourism boating facilities; Community facilities; Entertainment facilities; Environmental facilities; Flood mitigation works; Function centres; Hotel or motel accommodation; Information and education facilities; Kiosks; Landscaping material supplies; Marinas; Mooring pens; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Roads; Stock and sale yards; Veterinary hospitals; Water recreation structures

The proposed development is consistent with the RE2 zone objectives in that:

- The proposed development is for subdivision purposes only. There are no land uses proposed as part of this development application on proposed Lot 2 and on this basis, the proposed subdivision does not preclude the lot being used for private open space or recreational purposes at a future date.

- While the indicative masterplan demonstrates a future residential subdivision that is consistent with the current planning proposal being considered by Liverpool City Council, the lot size being proposed is capable of being used and developed as a park to compliment the future adjoining residential subdivision.
- A "recreation area" such as a pocket park is a permissible form of development within the RE2 zone and is compatible with both other land uses within the RE2 zone and the adjoining R3 zone.

In addition to the above, it is noted that Council is currently considering a Planning Proposal for a zone boundary adjustment to extend the R3 Medium Density Residential Zone boundary southwards to incorporate a component of the development site that is zoned RE2 Private Recreation.

While this Planning Proposal has not been approved, the proposed subdivision (including the creation of Proposed Lot 16 as part of Stage 2) is consistent with the future land uses within the R3 Medium Density Residential zone and future land use zone objectives.

The objectives of the R3 Medium Density Residential Zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To provide for a suitable visual transition between high density residential areas and lower density areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The land use zoning table permits the following land uses with development consent:

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Educational establishments; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Flood mitigation works; Group homes; Home businesses; Home industries; Hostels; Hotel or motel accommodation; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Public administration buildings; Recreation areas; Residential care facilities; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Shop top housing; Tank-based aquaculture

The proposed development is consistent with the R3 zone objectives in that:

- The proposed development is for subdivision purposes only. The creation of proposed Lot 2 (Stage 1) and subsequently proposed Lot 16 (Stage 2) would not preclude the future development of housing and residential development within a medium density residential zone.

- The creation of proposed Lot 2 (Stage 1) and Lot 16 (Stage 2) is intended to facilitate future residential subdivision and housing development that would support facilitating a range of housing types within a medium residential environment.
- While the indicative masterplan illustrates a future subdivision layout, given that the proposed development is for subdivision only, the development would still permit other facilities and services to meet the needs of future residents such as recreation areas (that is a permissible land use on the R3 zone).
- The indicative masterplan illustrates a future subdivision pattern that is consistent with the desired character of a medium density residential zone, thus providing a suitable visual transition between high and low density areas as well as the adjoining RE2 zoning (on proposed Lot 3, stage 1).
- The indicative masterplan illustrates future development is capable of providing a subdivision patterns that would allow for high levels of residential amenity to be achieved.

3. Clause 4.6 Exception to development standards –

Variation to minimum subdivision lot size for Community Title Schemes (Clause 4.1AA)

The objectives of Clause 4.6 Exceptions to development standards prescribes:

- 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.*

The following section provides justification for the contravention of the development standard (**Clause 4.1AA Minimum Subdivision Lot Size for Community Title Schemes**) by demonstrating:

- *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a), and*
- *that there are sufficient environmental planning grounds to justify contravening the development standard Clause 4.6(3)(b).*

3.1 What is the name of the environmental planning instrument that applies to the land?

The environmental planning instrument applying the land is Liverpool Local Environmental Plan 2008 (LLEP 2008).

3.2 What is the zoning of the land and what are the objectives of the zone?

The subject site is part zoned B6 Business Enterprise, R3 Medium Density Residential and RE2 Private Recreation under LLEP 2008.

Figure 6 (below) provides an extract of the zoning map from the Environmental Impact Statement (Volume 1) accompanying DA-24/2017.

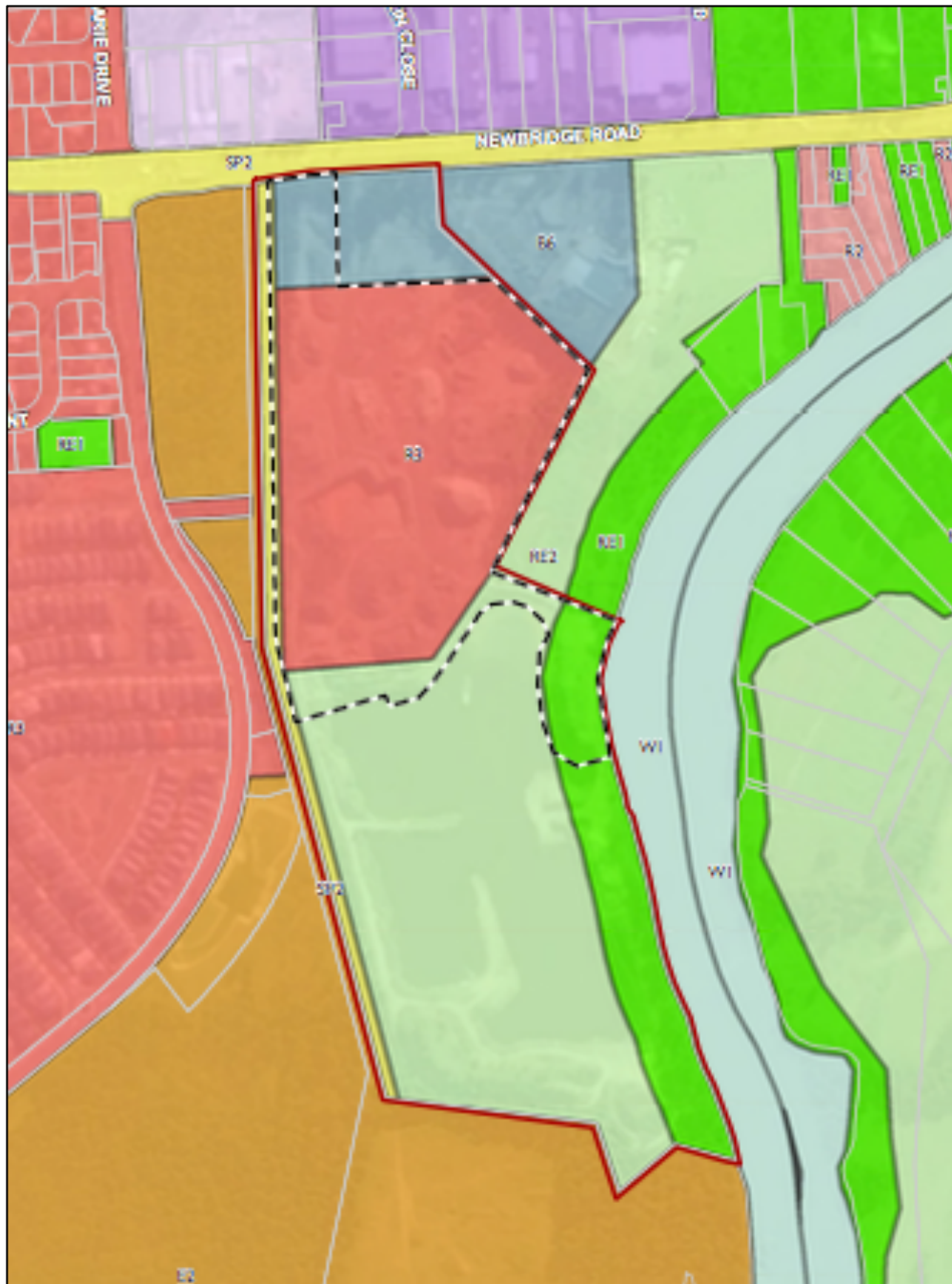


Figure 6: Extract of zoning map (EIS, Volume 1 prepared by EMM Jan 2017)

The land subject (being proposed Lot 16 created by stage 2 of the proposed subdivision) to the Clause 4.6 variation is zoned both R3 Medium Density Residential and RE2 Private Recreation under LLEP 2008.

The portion of proposed Lot 16 that is zoned RE2 Private Recreation has an area of 3,185sqm.

The objectives of the **R3 Medium Density Residential** Zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*

- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To provide for a suitable visual transition between high density residential areas and lower density areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The objectives of the **RE2 Private Recreation** zone are as follows:

- *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.*
- *To enable land uses that are compatible with, and complimentary to, recreational uses.*

3.3 Identify the Development Standard to which this Clause 4.6 Variation applies?

Clause 4.1AA Minimum Subdivision Lot Size for Community Title Schemes is the development standard being varied by the development application.

Clause 4.1AA(3) prescribes:

The size of any lot resulting from a subdivision of land to which this clause applies (other than any lot comprising association property within the meaning of the *Community Land Development Act 1989*) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

3.4 What are the objectives of the development standard?

The objectives of Clause 4.1AA Minimum Subdivision Lot Size for Community Title Schemes are:

- a) to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements,*
- b) to ensure that lot sizes in community title schemes are consistent with the desired residential density for different locations,*
- c) to ensure that lot sizes in community title schemes are able to accommodate development that is suitable for its purpose and consistent with relevant development controls,*
- d) to prevent fragmentation of land that would prevent the achievement of the extent of development and nature of uses envisioned for particular locations,*
- e) to prevent an increased traffic and safety impact as a result of increased lots on classified roads,*
- f) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,*
- g) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,*

- h) to ensure that lot sizes in community title schemes allow buildings to be sited to protect natural or cultural features including heritage items and retain special features such as trees and views.

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

The minimum lot size for land zoned RE2 Private Recreation prescribed under Clause 4.1AA of LLEP 2008 and as shown on the Lot Size Map is 10,000sqm.

An extract of the Minimum Lot Size map referenced in Clause 4.1AA applying to the site is illustrated in Figure 7 below.

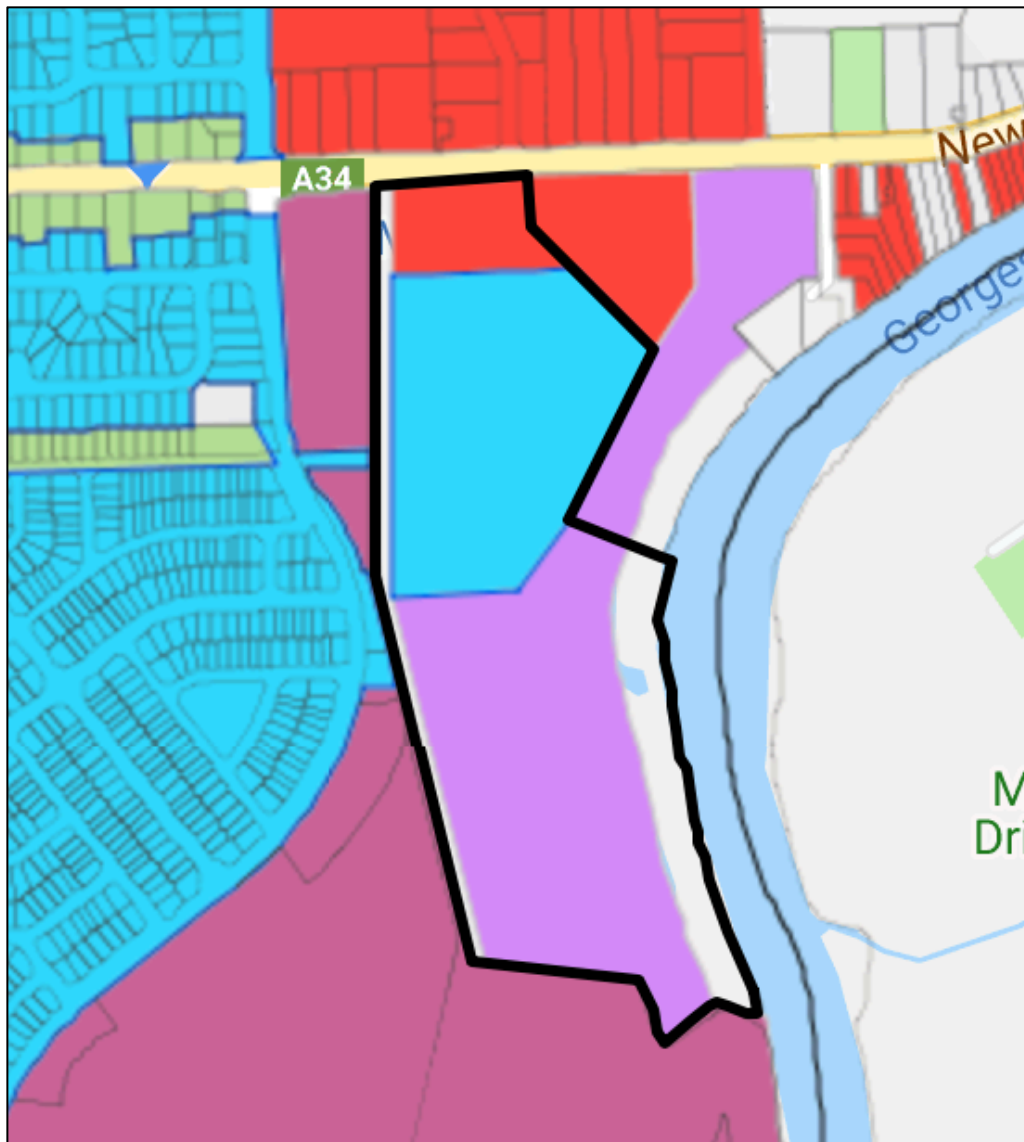


Figure 7: Extract of Minimum Lot Size map LLEP 2008

3.6 How does the proposed numeric values relate to the development standard?

Proposed Lot 16 in Stage 2 of the proposed subdivision has a lot size of 3,779.2sqm. The portion of proposed Lot 16 that is zoned RE2 Private Recreation has an area of 3,185sqm. The minimum lot size for RE2 zoned land is 10,000sqm

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

The NSW Land and Environment Court in *Four2Five Pty LTD v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The court provided five tests as follows:

- Test 1: *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
- Test 2: *The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary.*
- Test 3: *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
- Test 4: *The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
- Test 5: *The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land.*

Application of the five tests set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 is provided below:

The objectives of the standard are achieved notwithstanding non-compliance with the standard.

Proposed Lot 16 (Stage 2) contravenes the development standard for minimum lot size that is prescribed by Clause 4.1AA of LLEP 2008.

As noted earlier, proposed Lot 16 has a lot size of 3779.2sqm and is a significant departure from the 10,000sqm prescribed by Clause 4.1AA and the Minimum Lot Size map.

Assessment of the variation to the minimum lot size against the objectives of the Clause 4.1AA is provided below:

- a) *to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements,*

The proposed development and proposed Lot 16 (Stage 2) will not fragment land by the proposed subdivision. Rather the development and the creation of the proposed super lots is to ensure future residential subdivision and development accords with the dominant R3 Medium Density Residential zone for the site and is integrated with surrounding lands such as the R2 zoned land (Proposed Lot 3, Stage 1) and B6 zoned land (Proposed Lot 1, Stage 1).

- b) to ensure that lot sizes in community title schemes are consistent with the desired residential density for different locations*

Proposed Lot 16 (Stage 2 subdivision) is to facilitate future subdivision.

The facilitating subdivision (stage 2) is being proposed as a Community Title Scheme and will allow for future residential subdivision that is consistent with strategic planning and direction of the Moorebank East precinct. The structure of the Community Title legislation does not allow land to be added to the scheme once it has commenced. The part of Lot 16 that is zoned RE2 is therefore required to be included in the Community Title scheme at its commencement and cannot wait until the zone boundary adjustment (RZ-1/2019) is approved.

Enabling the facilitating subdivision and the creation of super lots supports the orderly development through the commencement of earth works, subdivision preparatory works and road construction that are essential to support future residential development.

It is also noted that the remaining RE2 land (being Super Lot 3) is compliant with the Minimum Lot Size controls (being 12.15Ha).

- c) to ensure that lot sizes in community title schemes are able to accommodate development that is suitable for its purpose and consistent with relevant development controls,*

Proposed Lot 16 has an area of 3779.2sqm and is of appropriate size to accommodate future residential subdivision as illustrated by the masterplan for future residential subdivision supporting DA-24/2017.

An extract of this plan is provided in **Figure 8** below.

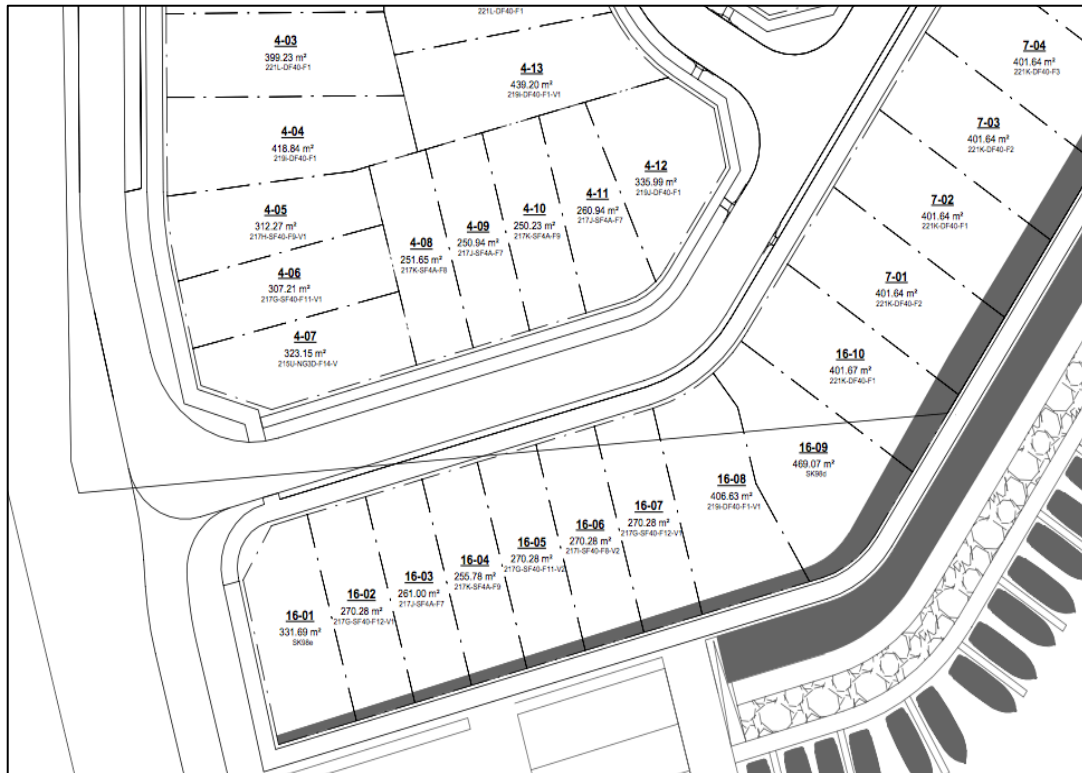


Figure 8: Extract of masterplan for future residential subdivision

The masterplan within **Figure 8** illustrates proposed Lot 16 is capable of future residential subdivision.

It is important to note that the future residential subdivision of proposed Lot 16 would be subject to separate development application and is reliant on the Planning Proposal RZ1/2019 being gazetted. However, due to the Community Title legislation the land currently zoned RE2 must be included upfront as it cannot be added later.

Should Planning Proposal RZ-1/2019 that seeks a boundary adjustment of the RE2 zoned land not be approved, the size of proposed Lot 16 would be capable of supporting a park and a recreational area that will be utilised within the community title subdivision.

A recreation area is a permissible form of development in the both the R3 Medium Density Residential and RE2 Private Recreation zones.

d) to prevent fragmentation of land which would prevent the achievement of the extent of development and nature of uses envisioned for particular locations,

Proposed Lot 16 would not result in land fragmentation and will allow future residential land subdivision that has been envisaged for the Moorebank East precinct.

As illustrated in **Figure 5**, the indicative masterplan illustrates that the future development of proposed Lot 16 is capable of supporting future residential lots.

Conversely, without the approval of the variation to this control proposed it is more likely that the part of Lot 2 zoned RE2 would become fragmented as it would be excluded from the Community Title scheme of the residential development.

As noted previously should Planning Proposal RZ-1/2019 that seeks a boundary adjustment of the RE2 zoned land not be approved, the size of proposed Lot 16 would be capable of supporting a pocket park and a recreational area that will be utilised within the community title subdivision.

- e) to minimise traffic impacts resulting from any increase in the number of lots on classified roads,*

The proposed development is for subdivision only. The development and the contravention to the minimum lot size will not result in any traffic impacts, however Traffic studies have been provided as part of DA-24/2017 noting no adverse impacts on traffic from the proposed development.

- f) to minimise any likely impact of subdivision and development on the amenity of properties,*

Proposed Lot 16 will not result in any amenity impacts on neighbouring properties.

Proposed Lot 16 will facilitate future residential subdivision that is consistent with the Moorebank East precinct and enable future residential development to be carried out.

Proposed Lot 16, will not impact on the amenity or future development of Proposed Lot 3 (Stage 1 subdivision) that is currently zoned RE2 Private Recreation.

As noted should Planning Proposal RZ-1/2019 that seeks a boundary adjustment of the RE2 zoned land not be approved, the size of proposed Lot 16 would be capable of supporting a pocket park and a recreational area that will be utilised within the community title subdivision that will also not have any impact on the amenity of the neighbouring properties.

- g) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,*

Proposed Lot 16 (Stage 2 subdivision) is to facilitate future subdivision. The part of Lot 16 that is zoned RE2 is required to be included in the initial Community Title subdivision as it legally cannot be added after its commencement. By including it in the first Community Title subdivision it allows for the reflection of the predominant subdivision pattern of the adjoining R3 zoned lands once the zone boundary adjustment under RZ-1/2019 is approved.

This plan and creation of future residential lots will be subject to separate development applications.

Should the Planning Proposal not be approved proposed Lot 16 still reflects and reinforces the predominant subdivision pattern of the area as the RE2 zoning allows for the road dedication as per the Masterplan and the remainder can be used for pocket parks or similar.

- h) to ensure that lot sizes in community title schemes allow buildings to be sited to protect natural or cultural features including heritage items and retain special features such as trees and views.*

The proposed lots do not impact on any natural or cultural features and does not impact on any special features. As noted in the Environmental Impact Statement accompanying the development application the site does not have any existing cultural features including heritage items or trees. Views are maintained to the Georges River in both the proposed future residential masterplan and if the land was retained as RE2 Private Recreation.

As demonstrated by all of the above, the objectives of Clause 4.1AA of LLEP 2008 are satisfied despite the contravention to the development standard.

The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary.

The underlying purpose of the development standard and prescribed minimum lot size for subdivision by 4.1AA is to ensure that proposed lots are capable of accommodating development that the land was intended for.

As canvassed earlier, proposed Lot 2 (Stage 1) and subsequently proposed Lot 16 (Stage 2) are created to facilitate future residential subdivision that is consistent with Councils strategic planning directions for the Moorebank East precinct, and is consistent with the Liverpool Development Control Plan 2008, specifically Section 2.10 Moorebank East.

Liverpool Councils long-term strategic vision for Moorebank East is to transform the Moorebank East locality along the Georges River from predominantly extractive industries to a quality natural environment that balances opportunities for sustainable development and regeneration of the Georges River foreshore.

Proposed Lot 16 is being created as part of a Community Title Scheme of subdivision to facilitate future residential development. On this basis compliance with the minimum lot size for subdivision is unnecessary. It has been demonstrated through the indicative masterplan that future development that is akin to Councils long-term vision and strategic objective can still be achieved through facilitating future residential development.

Any future residential lots on proposed Lot 16 are well integrated with future residential development of surrounding lots as well as the adjoining RE2 Private Recreation zone on proposed Lot 3 (Stage 1).

If the variation was not approved the land zoned RE2 would not be able to be added to the Community Title Scheme and would therefore not be consistent with the adjoining residential development occurring on the R3 lands.

The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

The portion of land that is zoned RE2 Private Recreation has to be included in the first Community Title subdivision to facilitate its use within the residential development, either as future homes if the zone boundary adjustment is approved, or as open space within the Community Scheme.

Therefore if the variation is not supported the part of the land zoned RE2 would be separated from future residential development.

Compliance with the proposed minimum lot size for subdivision is unreasonable in this instance, given that the proposed lot being created is to facilitate future development.

The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

Test 4 is not applicable to the circumstances of this development application.

The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land.

Compliance with the development standard for minimum lot size of subdivision is unreasonable in this instance in considering the context of development applications and planning proposals on the site.

Development and land use within the site is undergoing transition to satisfy Councils land use objectives for the Moorebank East precinct. This has seen the cessation of the extractive industry located on the south and both planning proposals and development applications lodged with Council to integrate residential development and a future marina (Georges Cove) on proposed Lot 3 (created in Stage 1).

Proposed Lot 16 despite not satisfying minimum lot size requirements for subdivision will still allow for an appropriate balance of residential development and private recreation development to occur in the Moorebank East precinct and activation of the Georges River foreshore.

Proposed Lot 16 is capable of being integrated with future residential subdivision of the remainder of facilitating lots created as part of stage 2 as well as having no impact on the amenity or development capabilities of the RE2 zoned land located within Proposed Lot 3 (stage 1).

Given that the proposed lot is only to facilitate future development and would not preclude future development that is not akin to the desired character of the Moorebank East precinct strict compliance with the development standard is unreasonable.

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

The proposed development and specifically the creation of Proposed Lot 16 that is required to be included in the first Community Title subdivision, as the legislation does not allow for additional land to be added after the commencement of the scheme. Therefore the contravention to the minimum lot size for subdivision is acceptable.

It is considered that there are sufficient environmental planning grounds to justify the reduction in minimum lot size for subdivision applying to proposed Lot 16. The proposed departure from the minimum lot size still ensures that the broader objective of the *Environmental Planning and Assessment Act 1979* to promote the orderly and economic development of the land (Clause 1.3(c)) is satisfied.

Proposed Lot 16 is being created as part of a facilitating subdivision to enable the future development of land within Proposed Lot 2(stage 1) that is consistent with the overall

strategic planning objectives to balance development and private recreation land uses development across the Moorebank East precinct.

The contravention will also not have any adverse impacts on the amenity of the adjoining properties. The indicative masterplan illustrates how future development on proposed Lot 16 is capable of being integrated with future residential subdivisions.

This masterplan also demonstrates that the proposed lots and future development of proposed Lot 16 is consistent with the currently planning proposal being considered by Council that seeks a boundary adjustment of the RE2 Private Recreation zone boundary.

Proposed Lot 16 is capable of supporting recreational development should the planning proposal not be supported. Proposed Lot 16 would be capable of supporting a park that could be integrated with the surrounding and future residential development that forms part of the community title subdivision scheme.

On this basis, it is considered that there are sufficient environmental planning grounds to support the variation to minimum lot size.

3.9 Is the proposed development, despite the contravention to the development standard, in the public interest?

The proposed development and specifically the creation of Proposed Lot 16 and the contravention to the minimum lot size for subdivision is acceptable and in the public interest, and is consistent with the objectives of the development standards (as canvassed in detail earlier) and the objectives of the RE2 zone.

The objectives of the RE2 Private Recreation zone are as follows:

- *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.*
- *To enable land uses that are compatible with, and complimentary to, recreational uses.*

The land use zoning table permits the following land uses with development consent:

Animal boarding or training establishments; Aquaculture; Boat sheds; Building identification signs; Business identification signs; Camping grounds; Car parks; Caravan parks; Centre-based child care facilities; Charter and tourism boating facilities; Community facilities; Entertainment facilities; Environmental facilities; Flood mitigation works; Function centres; Hotel or motel accommodation; Information and education facilities; Kiosks; Landscaping material supplies; Marinas; Mooring pens; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Roads; Stock and sale yards; Veterinary hospitals; Water recreation structures

The proposed development is consistent with the RE2 zone objectives in that:

- The proposed development is for subdivision purposes only. There are no land uses proposed as part of this development application on proposed Lot 16 and on this basis, the proposed subdivision does not preclude the lot being used for private open space or recreational purposes at a future date.
- While the indicative masterplan demonstrates a future residential subdivision that is consistent with the current planning proposal being considered by Liverpool City Council, the lot size being proposed is capable of being used and developed as a park to compliment the future adjoining residential subdivision.
- A "recreation area" such as a pocket park is a permissible form of development within the RE2 zone and is compatible with both other land uses within the RE2 zone and the adjoining R3 zone.

In addition to the above, it is noted that Council is currently considering a Planning Proposal for a zone boundary adjustment to extend the R3 Medium Density Residential Zone boundary southwards to incorporate a component of the development site that is zoned RE2 Private Recreation.

While this Planning Proposal has not been approved, the proposed subdivision (including the creation of Proposed Lot 16) is consistent with the future land uses within the R3 Medium Density Residential zone and future land use zone objectives.

The objectives of the R3 Medium Density Residential Zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To provide for a suitable visual transition between high density residential areas and lower density areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The land use zoning table permits the following land uses with development consent:

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Educational establishments; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Flood mitigation works; Group homes; Home businesses; Home industries; Hostels; Hotel or motel accommodation; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Public administration buildings; Recreation areas; Residential care facilities; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Shop top housing; Tank-based aquaculture

The proposed development is consistent with the R3 zone objectives in that:

- The proposed development is for subdivision purposes only. The creation of proposed Lot 2 (Stage 1) and subsequently proposed Lot 16 (Stage 2) would not

preclude the future development of housing and residential development within a medium density residential zone.

- The creation of proposed Lot 16 is intended to facilitate future residential subdivision and housing development that would support facilitating a range of housing types within a medium residential environment.
- While the indicative masterplan illustrates a future subdivision layout, given that the proposed development is for subdivision only, the development would still permit other facilities and services to meet the needs of future residents such as recreation areas (that is a permissible land use on the R3 zone).
- The indicative masterplan illustrates a future subdivision pattern that is consistent with the desired character of a medium density residential zone, thus providing a suitable visual transition between high and low density areas as well as the adjoining RE2 zoning (on proposed Lot 3, Stage 1).
- The indicative masterplan illustrates future development is capable of providing a subdivision patterns that would allow for high levels of residential amenity to be achieved,

4. Conclusion

The purpose of this document is to formally request a variation to a development standard pursuant to Clause 4.6 of Liverpool Local Environmental Plan 2008.

A variation is sought to *Clause 4.1 Minimum subdivision lot size* **and** *Clause 4.1AA Minimum subdivision lot size for community title schemes*.

This request to vary a development standard has been prepared to justify the contravention to a development standard and has been prepared in accordance with the considerations prescribed by Clause 4.6(3) of Liverpool Local Environmental Plan 2008.

As outlined in detail in this request, the development application seeks to contravene the minimum lot size for subdivision (prescribed by Clause 4.1 and 4.1AA) on two occasions:

- Proposed Lot 2 (Stage 1); and
- Proposed Lot 16 (Stage 2).

Stage 1 subdivision creates Super Lot 2 that is part zoned R3 Medium Density Residential and RE2 Private Recreation. The portion of proposed Lot 2 that is zoned RE2 Private Recreation is **0.41ha**.

Stage 2 subdivision works seeks to subdivide Super Lot 2 into 17 Community Title lots. One of these community title lots is proposed Lot 16.

Proposed Lot 16 has an area of **3779.2smq**. Proposed Lot 16 is part zoned R3 Medium Density Residential and RE2 Private Recreation. The portion of proposed Lot 16 that is zoned RE2 Private Recreation has an area of 3,185sqm.

Proposed Lot 2 (Stage 1) **does not comply with Clause 4.1 Minimum Subdivision Lot Size** and Lot 16 (stage 2) does not comply with **Clause 4.1AA Minimum subdivision lot size for community title schemes**.

This request has demonstrated that compliance with the minimum lot size is unreasonable and unnecessary in the circumstances of this development application. The development application despite the contravention to the development standard satisfies the criteria prescribed by Clause 4.6(3)(a).

This request has demonstrated that the proposal still achieves the objectives of Clause 4.1 and Clause 4.1AA despite the variation to the Lot Size Map.

This request has also demonstrated that there are sufficient environmental planning grounds to justify the contravention and the departure from the minimum lot size, thus satisfying the criteria of Clause 4.6(3)(b).

The development application and the departure from the development standard still accords with the relevant objectives of the Environmental Planning and Assessment Act 1979 and is consistent with both the zoning of the RE2 Private Recreation and R3 Medium Density Residential zones. In addition, the development application that seeks to facilitate future development with the Moorebank East precinct does not result in any amenity impacts.

It is therefore recommended that:

- Development Application DA-24/2017 be approved;
- The Clause 4.6 variation request be supported to contravene Clause 4.1 Minimum subdivision lot size; and
- The Clause 4.6 variation request be supported to contravene Clause 4.1AA Minimum subdivision lot size for Community Title Schemes.