

## 6. Submission Addressing Request for Variations to Clause 4.2D under Clause 4.6.

**Clause 4.6 Exceptions to development standards** allows for development consent to be granted even though the development would contravene development standards imposed by CVLEP 2011. In this instance the proposal does not comply with Clause 4.2D(2)(b) as both dwellings will have separate access to and from a public road, and Clause 4.2D (2)(c) as the dwellings are greater than 100m apart.

The following must be addressed by Council in determining whether to exercise its powers under Clause 4.6.

*(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*

Comment: Clause 4.2D (2)(b) Both dwellings will utilise existing access points to Ski Lodge Road being the driveway servicing the existing dwelling and the intersection with the formed access way in the road reserve to the north which currently provides access to the dwelling on Lot 28 DP 751385 (No. 40) Ski Lodge Road and to the Crown Reserve on the riverfront (Lot 7301 DP 1141816).

The alternative would be an internal driveway connecting to the existing access point with a length of 773m. This would have to cross low, boggy areas and so would be an expensive construction in terms of length and ground conditions. It would be unreasonable to require the construction of the internal driveway when an alternative exists.

Further, Council's comments in respect of the Crown Road Reserve are noted. The reserve cannot be purchased and closed as it services existing dwelling on the adjoining property (Lot 28 DP 751385) and the Crown riverfront Reserve. Therefore it may need to be converted to a Council public road and upgraded to Councils standards and classified as a Category 2 road. It would appear to be a better outcome if the applicant were to expend funds on improving this road which also benefits the neighbouring property and the reserve than on an internal driveway and therefore the requirement for a single access is unnecessary and unreasonable.

Clause 4.2D (2)(c) There are a number of constraints on the subject property which severely restrict sites available for the second dwelling and favour the high ridge site chosen. These include:-

- The 132kv and 330kv transmission lines running parallel to Ski Lodge Road at the front of the site. No dwellings can be built within 30m of these lines. The western line (132kv) appears to be approximately 70m from the frontage which, when allowing for the 30m setback, would severely restrict suitable sites for a large dwelling and associated structures west of that line. There is also an existing dam in this area. The eastern line is approximately 120m from the frontage, so no dwelling could be located between the lines. As a result any suitable dwelling site must be at least 30m east of the 330kv line and so more than 100m from the existing dwelling.
- To the east of the transmission line is archaeological site 12-6-0160, an Open Camp Site (see attached AHIMS). It is recommended that a dwelling and its curtilage not be located within the vicinity of the site, so its best location is some distance to the east or north, which is even further beyond the 100m limit.

- The centre of the property is low, boggy and flood affected and so not particularly suitable for a dwelling. As a attractive/suitable site cannot be identified within the 100m limit, it would appear to be reasonable to choose the proposed site as the best location given that it is flood free and set well back (130m) from the Clarence River bank. The 100 metre distance limit is then not relevant.

*b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment: 4.2D (2)(b) If it is accepted that there are no suitable sites within the 100m limit and that therefore it is immaterial how far outside the 100m limit the site can be, then the chosen site is favoured as it is flood free. In those circumstances, vehicular access must be provided and it is good environmental planning practice that existing infrastructure (i.e. the existing road reserve access) be utilised to minimise the impacts of development.

4.2D (2) (C). It is good environmental planning practice to locate dwellings on suitable sites free from hazards, which in this instance are the transmission lines and flood prone land. Also, it is good environmental planning practice to locate development away from identified aboriginal archaeological sites. The proposed location achieves these outcomes.

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*a) the consent authority is satisfied that:*

- the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Comment: Council to determine.

- 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*

Comment: The proposed arrangement is consistent with the objectives of the intention of Clause 4.2D which is to permit detached dual occupancies on rural land. As discussed above, the suitable sites are not available that meet the specific standards of the clause, but those standards are considered unnecessary and unreasonable in the circumstances.

The objectives of both the RU1 and RU2 zones are primarily concerned with encouraging agricultural activities, minimising land use conflicts and ensuring development is not adversely impacted by environmental hazards. The proposed development does not conflict with any objectives of either zone when it is taken into consideration that detached dual occupancies are permitted with consent in both.

*(5) In deciding whether to grant concurrence, the Planning Secretary must consider:-*

*a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

Comment: No state or regional significance.

*b) the public benefit of maintaining the development standard, and*

Comment: There is no public benefit in maintaining the 2 standards.

*c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

Comment: It is proposed to consolidate the two existing lots (giving a lot of 32.13ha) so that the proposed dwelling site does not straddle the existing boundary. The consolidation of rural land that cannot be subdivided in the future is a sound agricultural outcome.