

# Clause 4.6 Variation to Minimum Lot Size Development Standard

600 Childowla Road, Bookham NSW 2582

Prepared by: Linn Armour

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## 1. Introduction

This Clause 4.6 variation request supports a development application for the erection of a dwelling house at 600 Childowla Road, Bookham NSW 2582 (Lot 222 DP 39689), hereafter referred to as the Site. The Site is zoned RU1 Primary Production under the Yass Valley Local Environmental Plan 2013 (LEP) and has an area of approximately 9 hectares (22 acres). This is below the minimum lot size of 40 hectares required for a dwelling entitlement under Clause 4.2B(3) of the LEP, necessitating a variation under Clause 4.6.

This report demonstrates that strict compliance with the minimum lot size standard is unreasonable and unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify the contravention. The variation sought is approximately 77.5% of the development standard (9 hectares versus 40 hectares).

Orida Armour Lushmoor and Linn Armour purchased the Site on 4 June 2018 under the assumption it had a dwelling entitlement. This assumption was based on inaccurate information provided by Linn Armour's late grandfather (Linn Armour Snr), who purchased the lot before the environmental planning system began, and verbal advice from a Yass Valley Council clerk 38 years ago, which incorrectly suggested a dwelling could be built.

The Site's purpose has always been primary production, as evidenced by extensive trials by Linn and Orida to identify suitable agricultural activities for the small lot size. They have invested significantly in water lines, a large dam, extensive fencing, and a trial enclosed berry orchard with poultry access.

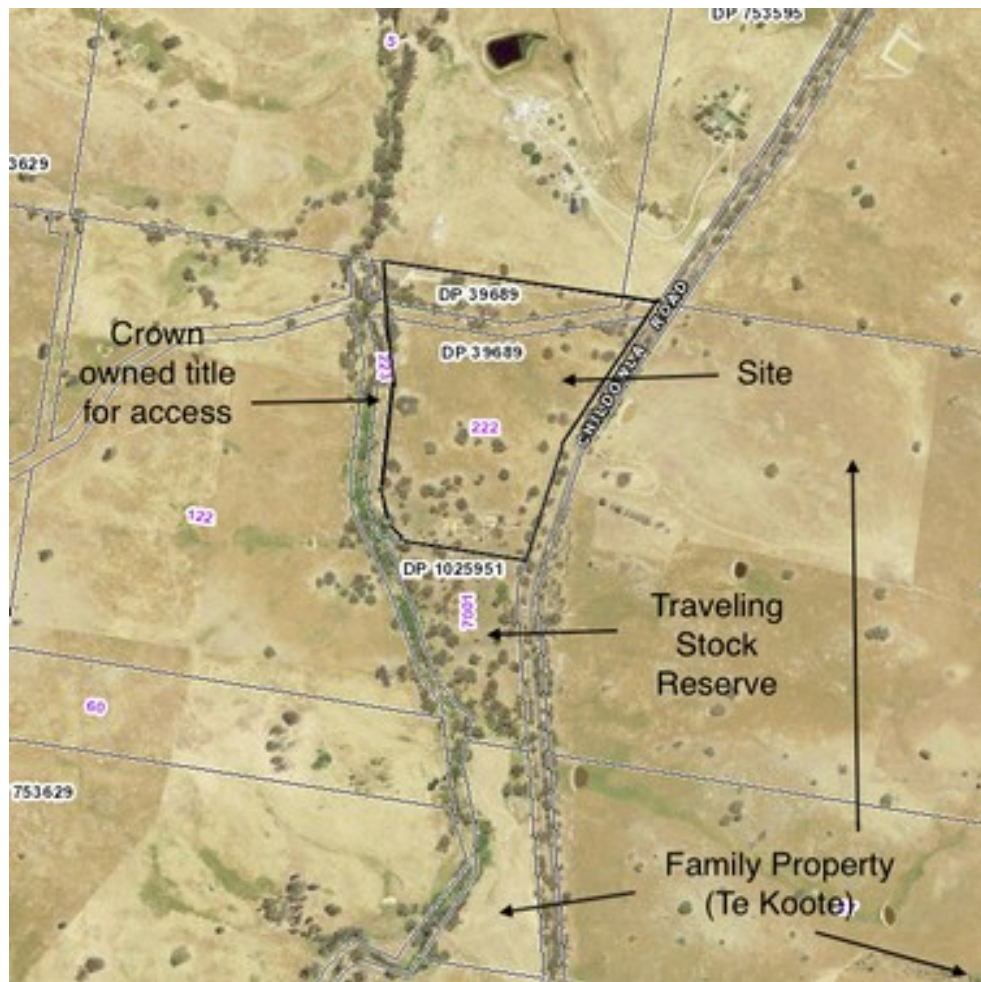
Due to extraordinary circumstances during the COVID-19 lockdowns, Linn and Orida were forced to reside on the Site, depleting their savings and preventing a planned relocation to Narooma. Subsequent vaccine injuries further compounded their financial and personal challenges, making the Site their only viable residence.

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## 2. Site and Proposal Overview

### 2.1 Property Details

- **Address:** 600 Childowla Road, Bookham NSW 2582
- **Legal Description:** Lot 222 DP 39689
- **Area:** Approximately 9 hectares (22 acres)
- **Zoning:** RU1 Primary Production (*Yass Valley LEP 2013*)
- **Surrounds:** 6 km south of Bookham and 35 km from Yass, bounded by rural land on three sides and a travelling stock reserve to the south. Access is via a private driveway off Childowla Road.



## 2.2 Proposed Development

The proposal seeks development consent for the erection of a single dwelling house on the Site. The dwelling is designed as a modest farmhouse consistent with the rural character of the area and will be located close to existing infrastructure so to preserve prime agricultural areas for primary production.

## 2.3 Development Standard

Clause 4.2B(3)(a) of the LEP specifies a minimum lot size of 40 hectares for the erection of a dwelling house on RU1-zoned land. The Site's 9 hectares represents a variation of 77.5% from this standard. Correspondence from Yass Valley Council has advised that none of the exceptions under Clause 4.2B apply, as the Site does not meet the definition of an existing parcel under historical planning instruments.



As the subdivision was done in 1979 for the purpose of Crown Land Issue, and to create a reserve for Access, the subdivision was not done under an LEP or IDO. Prior to Lot 222 being created, its description was 'Portion 218'- see historical map from 1941 below.



A previous TSR (1907 map)



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### 3. Authority to Vary the Development Standard

Clause 4.6 of the LEP provides flexibility to vary development standards where strict compliance is unreasonable or unnecessary and where sufficient environmental planning grounds justify the contravention. The objectives of Clause 4.6 are:

- (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.

Development consent may be granted for a proposal that contravenes a development standard if the consent authority is satisfied that:

- (a) Compliance with the standard is unreasonable or unnecessary in the circumstances, and
- (b) There are sufficient environmental planning grounds to justify the contravention (*Clause 4.6(3)*).

This submission addresses these requirements in accordance with legal precedents, including *Wehbe v Pittwater Council* [2007] NSWLEC 827, which outlines five methods to demonstrate that compliance is unreasonable or unnecessary.

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## 4. Justification for Variation

### 4.1 Is Compliance Unreasonable or Unnecessary? (Clause 4.6(3)(a))

The following assessment applies the *Wehbe* principles to demonstrate that strict compliance with Clause 4.2B(3) is unreasonable and unnecessary.



## **First Way: Objectives of the Standard Are Achieved Notwithstanding Non-Compliance**

The objectives of Clause 4.2B are: (a) To minimise unplanned rural residential development. (b) To enable the erection of dual occupancies in rural and conservation zones. (c) To enable the replacement of lawfully erected dwelling houses or dual occupancies in rural and conservation zones.

- **Objective (a):** The proposed dwelling does not constitute unplanned rural residential development. It is permissible within the RU1 zone, aligns with the Site's environmental capacity (e.g., access, bushfire protection, onsite sewage management, biodiversity), and complies with all relevant planning controls except lot size. The Site's rural context supports residential use ancillary to primary production.
- **Objective (b):** Not applicable (no dual occupancy proposed).
- **Objective (c):** Not applicable (no existing dwelling to replace). However, the historical misunderstanding of the Site's dwelling entitlement, based on prior verbal advice from Yass Valley Council and Linn Armour Snr before the 2018 purchase, supports flexibility in this case.

Compliance with the 40-hectare minimum is unnecessary, as the proposal achieves the intent of the standard by supporting rural land use without compromising the surrounding area's character or function.

## **Second Way: Underlying Purpose of the Standard Is Not Relevant**

The purpose of the minimum lot size—to prevent fragmentation of rural land and conflict with primary production—is not undermined:

- The Site is an existing lot, and no subdivision is proposed.
- The dwelling supports ongoing small-scale primary production (e.g., berry farming), consistent with RU1 zone objectives (see Section 4.2).
- Surrounding agricultural uses will not be impeded, given substantial setbacks (e.g., 500 meters to the nearest dwelling) and the Site's limited footprint.

## **Fourth Way: Development Standard Virtually Abandoned by Council Decisions**

The Site's creation through a 1979 subdivision for Crown land purposes, predating modern environmental planning controls, has left it without a dwelling entitlement despite its suitability for residential use. Approving this variation rectifies this legacy issue and aligns with the RU1 zone's intent.

## **4.2 Sufficient Environmental Planning Grounds (Clause 4.6(3)(b))**

The following grounds justify the contravention:

- **Consistency with RU1 Zone Objectives:** The dwelling supports sustainable primary production (e.g., berry farming, water infrastructure, fencing) and maintains the rural character of the area. It does not fragment resource lands or conflict with adjoining uses.
- **No Adverse Impacts:** The proposal has no material amenity, environmental, or agricultural impacts. It meets all technical requirements (e.g., bushfire protection, sewage management, access) and preserves biodiversity and prime agricultural land.
- **Site Suitability:** Despite its size, the Site is suitable for a dwelling, with existing infrastructure

(e.g., farm shed, water tanks, fencing) and a location on less fertile land to prioritise farming elsewhere on the lot.

- **Public Interest:** The dwelling contributes to housing supply (aligning with Yass Valley Council's 2029 targets) and supports the economic use of the land without subdivision.
- **Unique Circumstances:** The proposed 99-turbine wind farm by Squadron Energy, with 13 turbines within 2.5 km and one within 900 meters, threatens the Site's viability as a non-residential holding. A dwelling entitlement ensures its continued use for primary production rather than recreational purposes, which would conflict with RU1 objectives.

### 4.3 Extenuating Circumstances

On 29 March 2020, due to NSW COVID-19 lock down restrictions, Linn and Orida were forced to reside on the Site, as they could not relocate to their planned residence in Narooma. The lock downs depleted their personal and business savings, which were used to sustain their new agribusiness. After lock downs lifted, compliance with vaccine mandates to sell produce at markets led to severe Pfizer vaccine injuries, officially diagnosed as vaccine injury syndrome. These injuries have caused ongoing disability, but Linn and Orida are stabilising. Approving this variation would allow them to remain on the Site, rebuild their agribusiness, and secure a permanent residence, given the loss of alternative housing options.

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## 5. Conclusion

This Clause 4.6 variation request demonstrates that compliance with the 40-hectare minimum lot size under Clause 4.2B(3) is unreasonable and unnecessary. The proposal achieves the objectives of the standard and the RU1 zone, is supported by sufficient environmental planning grounds, and delivers a better planning outcome by enabling residential use ancillary to primary production without adverse impacts.

Approval of this variation will rectify a historical planning anomaly, support the sustainable use of the Site, and ensure consistency with the objects of the *Environmental Planning and Assessment Act 1979*. The unique circumstances of COVID-19 lockdowns and vaccine injuries further justify the need for this variation to enable Linn and Orida to remain on their land. I respectfully request that Yass Valley Council grant development consent accordingly.

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