
Clause 4.6 Variation Statement.

Multi Dwelling Housing

SITE | 7 Hanley Place, Yass

PREPARED FOR | Price Group

March 2025

Qualifications

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This report is current at the date of the development application only.

This report is to be read in its entirety and in association with other documentation submitted as part of the Development Application.

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Client	The Price Group		
Quality Management			
	Name	Date	Signature
Prepared by	NC	14.3.2025	NC
Approved for release by	NC	15.3.2025	NC
For further information contact	Nicholas Cavallo Associate Director +61 433 967 778 Nicholas.Cavallo@au.knightfrank.com		

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Enquiries should be addressed to Knight Frank Town Planning.

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1. Introduction

Knight Frank Town Planning has been commissioned to prepare a Clause 4.6 Variation Statement to Clause 4.1D Minimum site areas for dual occupancies and multi dwelling housing in Zones R1, R2, R3 and RU5 of the *Yass Valley Local Environmental Plan 2013* (the YLEP 2013) in support of a Development Application for a multi dwelling housing development. The site is located at 7 Hanley Place, Yass, legally described as Lot 1 DP 1193382.

The proposed building design does not comply with Clause 4.1D and consequently, a variation to the minimum site area development standard is being sought through this submission. The extent of the variation sought is minimal and is further considered and justified throughout this variation statement.

Clause 4.6 requires a Consent Authority to be satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with the relevant legislation and case law, this clause 4.6 variation request:

- identifies the development standard to be varied;
- identifies the extent of the variation sought;
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances; and
- demonstrates that there are sufficient environmental planning grounds to justify the variation.

2. The Proposed Variation – Clause 4.1D

An exception is being sought under Clause 4.6 of the YLEP 2013 from the need to comply with the development standard Clause 4.1D, which reads in full as follows:

Clause 4.1D Minimum site areas for dual occupancies and multi dwelling housing in Zones R1, R2, R3 and RU5

- (1) The objective of this clause is to achieve planned residential density in certain zones.*
- (2) Development consent must not be granted to development for the purposes of a dual occupancy unless the site area per dwelling is at least—*
 - a) in the case of Zone R1 General Residential—400 square metres, or*
 - b) in the case of Zone R2 Low Density Residential – 2,000 square metres, or*
 - c) in the case of Zone R3 Medium Density Residential – 150 square metres, or*
 - d) in the case of Zone RU5 Village if the site is connected to a reticulated sewerage system – 750 square metres, or*
 - e) in the case of Zone RU5 Village if the site is not connected to a reticulated sewerage system – 2,000 square metres,*
- (3) Development consent must not be granted to development for the purposes of multi dwelling housing unless the site area per dwelling is at least—*
 - a) in the case of Zone R1 General Residential—400 square metres, or*
 - b) in the case of Zone R3 Medium Density Residential – 150 square metres.*

In this instance a multi dwelling housing development is proposed within the R1 General Residential zone as such subclause 3(a) is the relevant part of the clause from which the development does not comply and from which a variation is being sought.

2.1 Extent of Variation Sought

The proposed development does not achieve compliance with the minimum site area requirements for a multi dwelling housing development within the R1 General Residential zone. This development standard as outlined in the objective seeks to achieve ‘planned residential density in certain zones’. In this instance a site area of 400sqm per dwelling is required.

Whereas the proposed development comprises six (6) dwellings. With a site area of 1,914sqm this equates to one (1) dwelling per 319.5sqm or a variation of 20%.

3. Assessment of Proposed Clause 4.6 Variation

Clause 4.6 Exceptions to Development Standards of the YLEP 2013 permits Council the flexibility to grant consent where a development exceeds a development standard. Clause 4.6 states:

- (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 to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
 - (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—
The [Environmental Planning and Assessment Regulation 2021](#) requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).
- (4) *The consent authority must keep a record of its assessment carried out under subclause (3).*
- (5) *(Repealed)*
- (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 C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 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.*
- (7) *(Repealed)*
- (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,*
 - (caa) *clause 5.5.*
 - (ca) *clause 6.12*

3.1 Objectives

The object of the Clause is to provide a degree of flexibility when considering a development against the development standards to achieve better outcomes for and from development in particular circumstances.

This submission demonstrates that despite not achieving the minimum site area requirements that a better outcome is achieved in this instance and that it is appropriate to apply flexibility in this circumstance.

3.2 Exclusions from the Operation of Clause 4.6

Council may grant development consent even though the development would contravene a development standard imposed by the YLEP 2013. Clause 4.1D is not a development standard expressly excluded from the operation of this clause as noted in Clause 4.6(8).

3.3 Compliance with the development standard is unreasonable or unnecessary

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the development being considered as justified using the *Wehbe v Pittwater Council [2007] NSWLEC827* (Wehbe) Court case, where Preston CJ identified five ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. The five ways outlined in Wehbe are:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).
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 (Fourth Way)
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable and unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).

This submission relies on the First Way to support our submission that compliance with the development standard is unreasonable or unnecessary.

Objectives of the Development Standard (First Way)

The following are the objective of the height of building development standard being varied:

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

It is our view that the objectives of the development standard being varied are achieved despite the non-compliance.

Relevant to the consideration of the 'planned residential density' is the population that would be generated by the development. There is a significant amount of land zoned R1 General Residential within Yass town of which a large portion of this is underdeveloped as large lots with detached dwelling houses, well below the allowable density of 1 dwelling per 400sqm for multi dwelling housing development.

With respect to the planned residential density of the zone this would generally be considered in the context of the dwelling typology, the number of bedrooms and occupancy rates per dwelling. Below we consider the population assumptions as it relates to the site.

While the development proposes the construction of six (6) dwellings each dwelling only contains three (3) bedrooms. These are not significant dwellings in terms of their size and associated amenities and are for all intents and purposes townhouse or attached dwelling typologies.

With reference to Council's Yass Settlement Strategy the average household size is expected to fall from 2.67 to 2.63 by 2026 [pg.37]. For the purpose of this statement and considering the likely population we do not consider it appropriate to apply that average weighting to a townhouse development which is not the predominant form of housing within the LGA. In fact, 2021 census data details that 93.5% are separate houses whereas only 4.1% are semi-detached/row/terrace houses within the Yass Valley LGA. The 'residential density

guide' prepared by Landcom and dated 2011 applies an occupancy rate in Sydney of 3.04 people for each detached house and 2.36 people for a semi-attached house.

We consider it to be reasonable to assume that a dwelling per 400msqm would account for a dwelling that would comprise say between 4-5 bedrooms. Using the Landcom guide assumptions we consider the following likely occupation rates to be reasonable for the proposed development and when considered against a development that complies against the site area requirements.

	No. of Dwellings	Dwelling Density	Occupancy Rate	No. of Bedrooms	Population
Proposed Development	6	1 dwelling per 319.5sqm	2.36	3	14.16
Compliant Development (1)	4.785 (i.e. 1914/ 400sqm)	1 dwelling per 400sqm	3.04	4-5	14.54
Compliant Development (2)	4.785 (i.e. 1914/ 400sqm)	1 dwelling per 400sqm	2.67	4-5	12.78

So, while the development does not achieve compliance with the development standard the actual population likely to be accommodated within the development does not differ in any significant manner from a development which complies with the site area requirements.

Given the nature by which development is considered against this development standard being 1 dwelling per 400sqm a compliant development, if considered as a whole figure, significantly exceeds the rate at 1 dwelling per 478.5sqm.

It is our view that the proposed development remains consistent with the planned residential density within the R1 General Residential zone in that it will provide for a housing typology that will accommodate a similar population on the site than an equivalent detached dwelling typology which would account for additional bedrooms within each and would account for the same density when considered in terms of the gross floor area of 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 (Fourth Way)

The proposed clause 4.6 variation does not rely on the fourth way for the purpose of demonstrating that compliance with the development standard is unreasonable or unnecessary. It is however instructive to consider developments within Yass town that have been approved which are not compliant with the current site area requirements.

Site Address	Block Size (approx.)	Dwellings	Dwelling Density
59 Lead Street	929sqm	4	1 per 232sqm
13 Walker Place	1409sqm	4	1 per 352sqm
24-26 Demestre Street	4245sqm	13	1 per 326sqm

While these development may have been considered and approved under previous planning controls it remains that these types of development have been approved by Council within the R1 General Residential zone. That these are types of development that are appropriate within the zone.

3.4 Sufficient environmental planning grounds to justify contravening the development standard

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, it was determined that it is necessary for applicants to demonstrate there exist sufficient grounds particular to the development in the Clause 4.6 objection.

In *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* [2023] NSWLEC 1065, it was considered by Commissioner Dickson that avoiding adverse impacts may constitute sufficient environmental planning grounds as it promotes 'good design and amenity of the built environment' being one of the objects of the EP&A Act 1979. However, that the lack of impact must be specific to the non-compliance to justify the breach.

With regard to the relevant case law mentioned there are considered to be sufficient environmental planning grounds specific to the development and subject site that warrant support as detailed below:

- The maximum permitted floor space ratio (FSR) for the site pursuant to cl4.4 of the YLEP 2013 is 0.5:1 which would permit on this site a development with a gross floor area (GFA) of up to 957sqm. Whereas the development proposes a GFA of 798sqm is proposed equating to an FSR of 0.42:1 (or 0.417:1). The proposed development does not therefore result in a physical increase in terms of the bulk and scale of development that could otherwise be achieved on the site.
- Whilst the development proposes an increase in the number of dwellings that can be achieved on the site, the number of persons likely to be accommodated does not change significantly from a comparable detached dwelling development that is compliant. In that the development proposes a townhouse typology each with only three (3) bedrooms.
- As demonstrated in the submitted documentation the amenities that are required for a multi dwelling housing development including private open space, landscaping, two (2) parking spaces, and clothes drying facilities, are able to be accommodated within the site.
- The development does not adversely impact upon adjoining properties with respect to overshadowing or privacy impacts. While the development does vary the required side setbacks this is related to the irregular dimensions and orientation of the site and the need for an access handle rather than the number of dwellings that are sought.
- A Traffic and Parking Impact Report has been prepared in support of the application. There are no impacts identified with respect to impacts from the development on the local road network with regard to the number of vehicular movements nor the design of the access arrangement.
- The Yass Valley Development Contributions Plan 2018 dated March 2019 applies to the development of the site and provides for the local infrastructure contributions payable. Local infrastructure contributions are payable based on the cost of development. It is considered that the payment of local infrastructure contributions will satisfy the demand for community infrastructure generated by the development.

For the above reasons, it is considered there are sufficient environmental planning grounds consistent with clause 4.6(3)(b) to warrant support from Council.

3.5 State or regional environmental planning significance

Contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

3.6 Public interest

The development is considered to be in the public interest as it would contribute towards diversity of housing in Yass which is considered to remain within the planned density for the zone. As discussed throughout this variation letter, the proposed height exceedances will not result in negative environmental or amenity impacts including with regard to traffic impacts or demand for community infrastructure. That the proposed development owing to its typology will not result in a significant difference with respect to the population accommodated within the site than that of a comparable detached dwelling development.

While it is no longer a statutory requirement to satisfy the matter of 'public benefit', which has since been repealed, for the purpose of considering the development particularly against the zone objectives that it is still prudent to do so.

The subject site is zoned R1 General Residential zone under the YLEP 2013 and the proposed development is permissible with development consent. The objectives of the R1 zone are as follows:

- *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.*

The proposed development is considered to be consistent with the zone objectives as detailed below:

- The development will provide for the housing needs of the community. The prevailing form of residential accommodation within the Yass Valley LGA and within Yass town is of detached dwellings. There is an evident need for a diverse range of housing types including townhouse / attached dwellings that promote housing choice.
- The development will provide for 3 bedroom dwellings contributing towards the housing types and densities within Yass. Given the smaller footprint of each dwelling there is a reduced maintenance burden accommodating a wider range of occupants.
- With respect to the permissible types of residential accommodation permitted within the zone it is noted that attached dwellings; boarding houses; dual occupancies; dwelling houses; group homes; multi dwelling housing; residential flat buildings; seniors housing; and shop top housing are all permissible forms of development. This diversity of housing types does give an expectation of a certain density of development that is able to be achieved across land within the zone.

The proposed development achieves the objectives of the development standard being varied and the objectives of the zone in which it is proposed, despite the non-compliance with clause 4.1D. Therefore, the proposed development remains in the public interest despite the variation being sought.

4. Conclusion

This Clause 4.6 variation request demonstrates that compliance with Clause 4.1D Minimum site areas for dual occupancies and multi dwelling housing in Zones R1, R2, R3 and RU5 within the YLEP 2013 is unreasonable and unnecessary in the circumstances of the proposal and that the proposed variation to the standard is considered to be an acceptable outcome.

This variation statement details the unique circumstances of the proposed development, which will provide a better planning outcome in the context of the site for the following reasons:

- Compliance with the site area requirements is unreasonable and unnecessary in the circumstances of the proposed development given that the residential typology proposed will accommodate a similar population than a compliant and comparable detached dwelling development.
- There are sufficient environmental planning grounds to justify the contravention which results in a better planning outcome than a strictly compliant development in the circumstances of this particular case.
- The proposed development is consistent with the objectives of the R1 General Residential zone.
- The proposed non-compliance with the site area requirements will not result in any matter of significance for State or regional environmental planning.
- The proposed development is in the public interest.