



Yarrah Estate, Stage 2B – 39 Residential Lot
Subdivision

Nelson Street, Yass

MAY 2026

Submitted to Yass Valley council
On behalf of WMD Group

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1. Introduction

1.1. Overview

This Clause 4.6 Variation Request has been prepared by Habitat Planning on behalf of WMD Communities and is submitted to Yass Valley Council in support of a Development Application (DA) for Stage 2 of Yarrah Estate, comprising a thirty-three (33) lot residential subdivision, on land registered as Lot 1 DP 1316265, approved as part of DA210272C. The modification and this report proposes to increase the lots approved from 33 to 39 lots.

Of the original 33 lots that formed part of the approval and Stage 2, 10 lots in Stage 2A have been constructed and registered. The modification application only applies to Stage 2B.

This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the Minimum Subdivision Lot Size development standard:

- Compliance with the Minimum Subdivision Lot Size (MLS) development standard contained within Clause 4.1 of the LEP is unreasonable and unnecessary in the circumstances of the case as the objectives of the standard are achieved notwithstanding non-compliance with the standard;
- There are sufficient environmental planning grounds to justify contravention of the standard, as:
 - It is consistent with the first objective of Clause 4.6 of the LEP, which allows a degree of flexibility in applying certain development standards in instances where it is considered appropriate to the circumstances of the particular development;
 - It is consistent with the second objective of Clause 4.6 of the LEP in that the proposed variation will enable the achievement of a better outcome for and from the development.
 - The proposal achieves the objectives of the R1 General Residential zone, as it will provide for the housing needs of the community via the provision of a variety of housing types and densities, which will support housing affordability and high quality design outcomes.
 - The variation does not alter the approved built form envisaged under DA210272C and is not anticipated to result in unacceptable environmental impacts to the surrounding area or amenity to neighbouring lots.
 - The proposal is consistent with concept plan approved as part of DA230531 and does not increase the residential development yield, originally envisaged for the site.

1.2. Statutory Context

Clause 4.6 of the LEP seeks to provide an appropriate degree of flexibility in applying certain development standards to particular development and achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6(2) states that:

(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.

Pursuant to the above clause, this application seeks a variation from the standards required by Clause 4.1 of the LEP. This clause is not expressly excluded from the operation of Clause 4.6.

The development standard is expressed under Clause 4.1(3) as:

- (3) 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.*

The application seeks approval for 11 lots that are less than 700m² minimum lot size. Therefore, approval is sought under Clause 4.6 of the LEP.

2. Proposed Variation

This Clause 4.6 variation request seeks to justify contravention of the development standard set out in Clause 4.1 of the LEP for 11 lots as listed in the table below.

Table 1 | Extent of proposed non-compliance

LEP Clause	Standard	Proposed	Extent of non-compliance
4.1 Minimum Subdivision Lot Size	700m ²	Lot 77 = 402m ²	298m ² (42%)
		Lot 78 = 402m ²	298m ² (42%)
		Lot 79 = 450m ²	250m ² (35%)
		Lot 80 = 450m ²	250m ² (35%)
		Lot 90 = 497m ²	203m ² (29%)
		Lot 91 = 505m ²	195m ² (27%)
		Lot 92 = 450m ²	250m ² (35%)
		Lot 93 = 450m ²	250m ² (35%)
		Lot 94 = 450m ²	250m ² (35%)
		Lot 95 = 450m ²	250m ² (35%)
		Lot 96 = 450m ²	250m ² (35%)
Total		11 Lots	

2.1. Clause 4.1 Minimum Subdivision Lot Size

This request seeks to amend the development standards under Clause 4.1 of the LEP. The objectives of this standard are set out below:

- (a) to minimise the likely impact of subdivision on the amenity of neighbouring properties,
- (b) to ensure that lot sizes and dimensions have appropriate regard to the characteristics of the land, the rural environment, the protection of biodiversity, significant geological and natural resources, the heritage and the built form of Yass Valley,
- (c) to ensure that subdivision reflects and reinforces the predominant subdivision patterns of neighbouring properties and surrounds,
- (d) to maintain the character of Yass Valley,
- (e) to ensure subdivision occurs in a planned and sustainable way,
- (f) to ensure subdivision does not create unreasonable or uneconomic demands for the provision or extension of services,
- (g) to prevent the subdivision of land on the fringe of urban areas into small lots that may negatively influence the layout of future urban areas.

The development standard is expressed under Clause 4.1(3) as:

- (3) 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.

The subject site is located as per the Figure below with reference to the minimum lot size map.

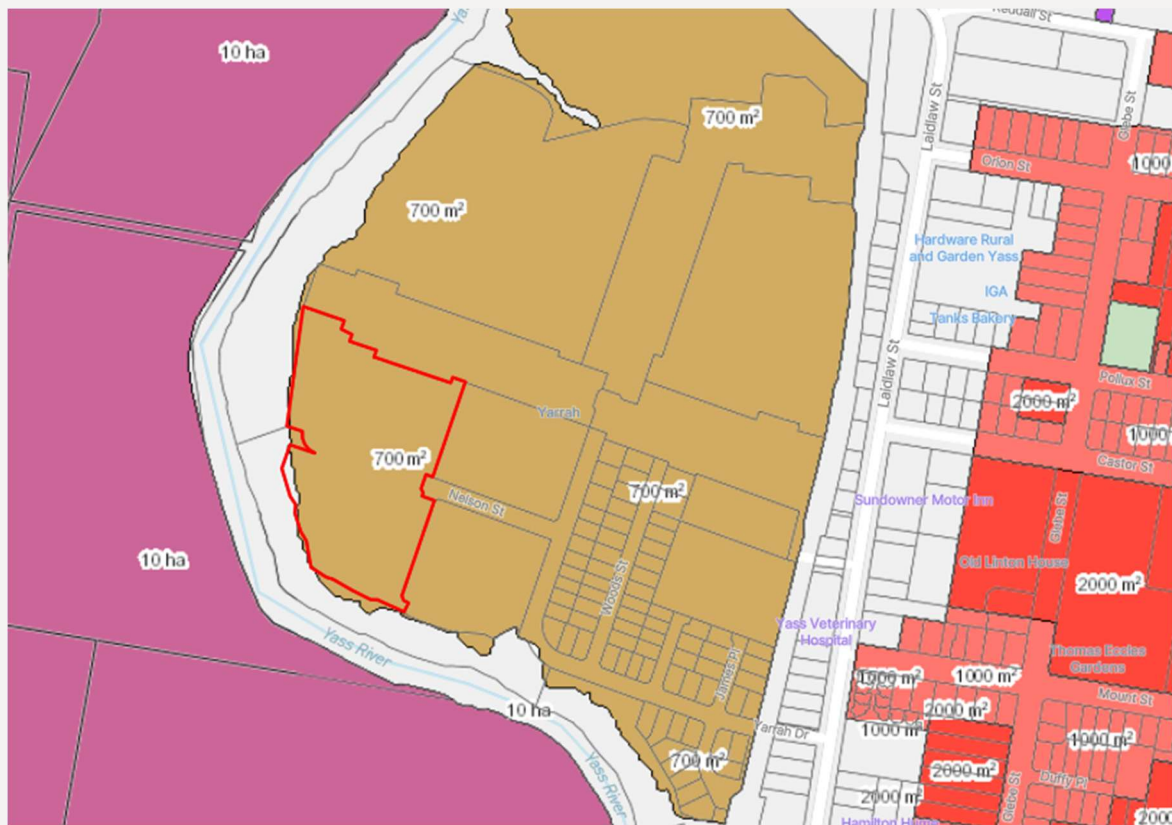


Figure 1: Lot Size map

2.2. Nature of variation

The proposed subdivision will see 11 lots created that are below the minimum lot size requirement for the development standard. These 11 lots that are less than the minimum lot size are as noted in the table above.

The subdivision layout with the lots subject to this application are highlighted in the Figure 2 below.

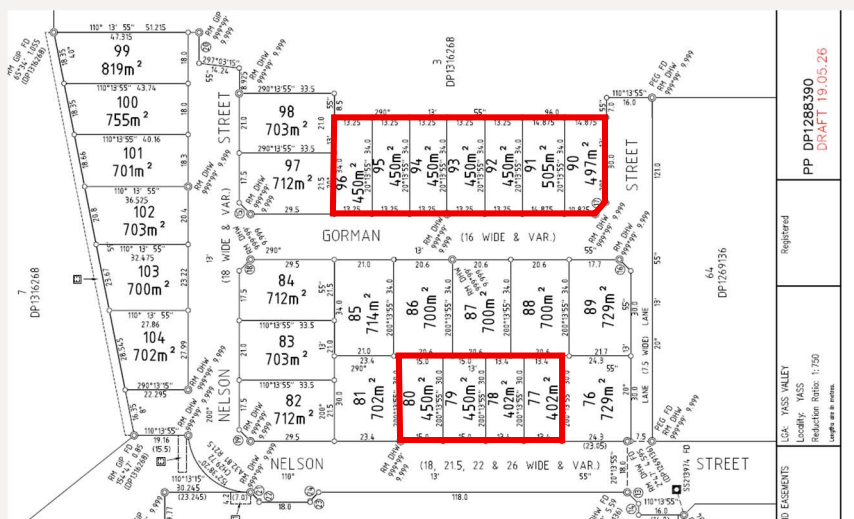


Figure 2: Proposed plan of subdivision and location of lots – Stage 2B

3. Assessment

3.1. **Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case.**

Addressing the variation to the development standard, Clause 4.6 requires an application to satisfy the consent authority 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*

In considering the reasons for the variation, reference is made to *Wehbe v Pittwater* [2007] NSW LEC 827. Here, five methods were established in which a variation to a development standard is considered to be unreasonable or unnecessary:

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
- 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; and*
- 5. The zoning of the 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 or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

In applying the tests or methods of *Wehbe v Pittwater Council* [2007] NSWLEC 827, it is noted that only one of the above reasons listed above is required to be established. In this instance, compliance with the development standard is considered both unreasonable and unnecessary as summarised below.

3.1.1. **Method 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard;**

In this instance, compliance with the development standard is unreasonable and unnecessary as the proposal is considered to achieve the objectives of the standard (Clause 4.1 Minimum subdivision lot size), is in the public interest and the first method is of assistance to the matter for the following reasons.

The underlying objective or purposes of the *Clause 4.1 Minimum subdivision lot size* development standard is as follows:

- (a) to minimise the likely impact of subdivision on the amenity of neighbouring properties,*
- (b) to ensure that lot sizes and dimensions have appropriate regard to the characteristics of the land, the rural environment, the protection of biodiversity, significant geological and natural resources, the heritage and the built form of Yass Valley,*
- (c) to ensure that subdivision reflects and reinforces the predominant subdivision patterns of neighbouring properties and surrounds,*
- (d) to maintain the character of Yass Valley,*

- (e) *to ensure subdivision occurs in a planned and sustainable way,*
- (f) *to ensure subdivision does not create unreasonable or uneconomic demands for the provision or extension of services,*
- (g) *to prevent the subdivision of land on the fringe of urban areas into small lots that may negatively influence the layout of future urban areas.*

The development, despite not meeting the development standard, meets the above objectives. The 11 lots are contained within existing R1 land and is part of Stage 2B of a Master planned community. The subdivision layout is such that it readily provides for the future development of adjoining land. The original subdivision plan designed each lot subject to the variation, to accommodate dual occupancy developments, the built form and residential development yield outcomes on the site and with Yarrah Estate do not change.

The infrastructure, lot orientation and road layout have already been approved and designed. Consideration to the subdivision patterns and road layout was given through the assessment of the original development consent. The 11 lots under the minimum lot size are similar to lots approved in Stage 1, which contain undersized lots from 442-698m² in size.

The subdivision is part of a Masterplan that considers the development of an entire community. The Masterplan will ensure that the development is sustainable and delivers efficiencies in terms of infrastructure and servicing by identifying opportunities to consider orientation, integrated water management and infrastructure in an orderly and both environmentally and economically efficient manner. The implementation of the Masterplan will require an amendment to the YLEP later this year. Initial discussion has been undertaken with planning staff and it is anticipated that a Planning Proposal will follow the current modified development application. Given the timeframes for a Planning Proposal it was considered a more efficient to prepare and DA under the current YLEP provisions and utilise clause 4.6 to deliver the desired outcome.

3.1.2. Method 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

The objectives of the standard are relevant to the proposal and as per the above, are able to be met. In addition to the above and Council subdivision approvals across Yarrah estate and the Yass township, the development standard of 700m² is no longer meeting the objectives of Clause 4.1.

3.1.3. Method 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

Not applicable to the subject application.

Approval under this method is not sought in this instance.

3.1.4. Method 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

Council has allowed several subdivisions less than the minimum lot size requirement, consistent with the requirements of Clause 4.1D, or where either a community title or strata title subdivision is proposed.

Whilst it is acknowledged that for the majority of Yarrah Estate and Yass township more broadly, Council seeks to achieve compliance with the minimum lot size requirement. However, there have been several instances (highlighted below) where the standard has been varied.

An analysis of lots in Yass, less than 700m² in size has been undertaken. In total there are 677 lots across the Yass township less than 700m², as shown in Figures 3 and 4 below.



Figure 3: Undersized lots north of Yass River

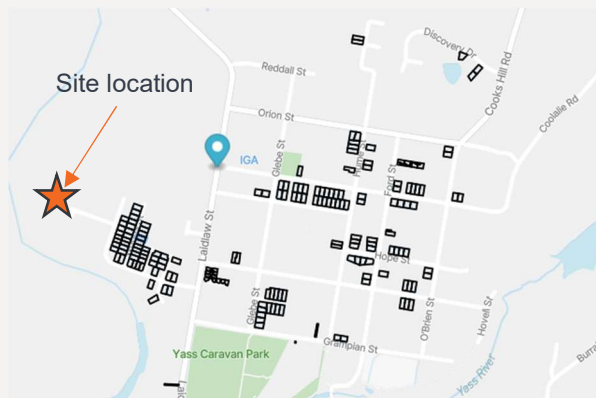


Figure 4: Undersized lots north of Yass River

More specifically and relevant to development application, there are 52 lots within Yarrah Estate, located in Stage 1 under the minimum lot size of 700m² (as shown in Figure 5 below). These lots range from 442-698m² in size.

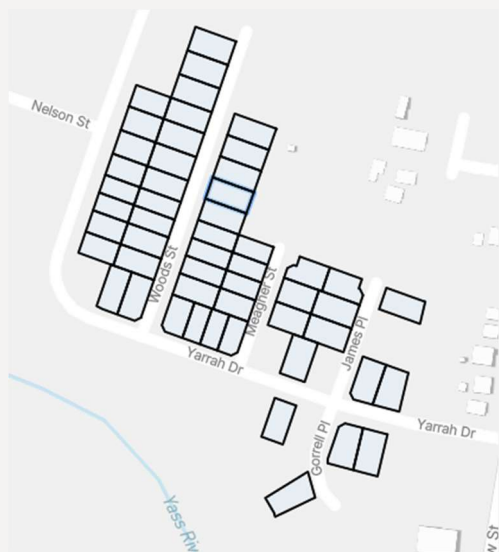


Figure 5: Undersized lots in Yarrah Estate

Considering the above, it appears that Council has often departed from the development standard within Yarrah Estate and across the Yass township to provide better development outcomes. The minimum lot size of 700m², currently within the LEP across Yarrah Estate, is no longer providing the diversity of housing sought by the zone and development standard objectives. On this basis, it is considered both unreasonable and unnecessary to enforce the minimum lot size standard.

To address the above, and to allow for the implementation of the existing Masterplan, an amendment to the YLEP will be lodged with Council later this year. This process can take up to 12 months to occur, considering the development yield of the site will not be increased as part of this application as originally envisaged and the housing shortages across Yass, a variation under Clause 4.6 has been sought.

3.1.5. Method 5: The zoning of the 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 or unnecessary. That is, the particular parcel of land should not have been included in the particular zone

The existing R1 General Residential zoning is considered appropriate for the land. However, as stated above the minimum lot size of 700m² is no longer appropriate and requires review through a planning proposal, anticipated to be lodged later this year.

Approval under this method is not sought in this instance.

3.2. Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed development demonstrates sufficient environmental planning grounds to justify a flexible approach to the application of the Minimum Subdivision Lot Size development standard as it applies this site.

In the case 'Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009', the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site.

It is considered that the shortfall in lot size for the 11 lots will not create a poor planning outcome as the lots are sufficiently sized for future dwellings and can accommodate a suitably sized building envelope when considering small lot housing options (including compliance with the Yass DCP and Yarrah Development Guideline).

The variation is not anticipated to result in unacceptable impacts on amenity to neighbouring lots as for the most part the variation is minor, or relates to a corner site. Dwellings will be able to achieve required front and rear setbacks, with sufficient space for onsite car parking and private open space. It is not anticipated that the lots less than the minimum lot size will result in loss of amenity to adjoining lots in terms of privacy, overshadowing, noise or create any other social impacts.

Furthermore, it is not anticipated that the lots less than the minimum lot size will create any adverse impacts to the broader neighbourhood or community in terms of access or creation of traffic and impacts to pedestrians or cyclists. Similarly, the lots below the minimum lot size are not anticipated to create any environmental or servicing issues.

Essentially, the proposal will have a similar impact to a development that complies with the LEP controls, which justify the proposed variation to the Minimum Lot Size development standard.

In light of the above, it is considered that there are not environmental planning grounds that warrant maintaining and/or enforcing the minimum subdivision lot size in this instance. Rather, the above demonstrates justifiable environmental planning merits that support the flexible use of the minimum subdivision lot size by Clause 4.6 of the LEP.

3.2.1. Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the Minimum Subdivision Lot Size development standard, for the reasons discussed in **Section 3.1.1 to 3.1.5** of this report.

3.2.2. Consistency with objectives of the zone

Table 2 | Consistency with objectives of R1 General Residential Zone

Objective	Response
To provide for the housing needs of the community.	The proposed development seeks to create a 39 lot residential subdivision which will provide a variety of lot sizes that are capable of residential development, providing for the housing needs of the community.
To provide for a variety of housing types and densities.	The proposed subdivision will create a variety of lot sizes and therefore a variety of housing and densities is anticipated to ensue. It is anticipated that the smaller lots, subject to this Clause 4.6 variation request will attract a smaller scale of development suitable for smaller or single occupant households providing a variety of housing types and densities in Yass.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposed subdivision will create a total of 39 residential lots. It is anticipated that all of the lots will be developed with residential dwelling capable of meeting the day to day needs of residents.

3.2.3. Consistency with DCP

Part C – Subdivision Controls provide the overarching objectives for subdivision to support the objectives of the YLEP 2013.

The objectives of Part C are:

- To provide a range of lot sizes whose design responds to site characteristics and maximizes solar access opportunities;*
- To ensure that subdivision drainage design provides for public safety and asset protection during major storm events;*
- To ensure that each lot created has access to all available essential services;*
- To encourage high quality, secure, accessible multi-function public open spaces that meets the needs of the community;*
- To enhance local street character and reinforce road hierarchy;*
- To ensure liveable, aesthetically pleasing neighbourhoods;*
- To provide safer routes for pedestrians, cyclists and motorists and connections to existing foot and cycle ways;*
- To encourage increased physical movement and healthier lifestyles within neighbourhoods, including those people who are vision or mobility impaired;*
- To ensure subdivision of rural land protects the existing and future agriculture base of the Yass Valley;*
- To minimise potential rural land use conflict through subdivision design.*

The modification and variations are consistent with the objectives above. Specifically, the subdivision provides a range of lot sizes consistent with the surrounding character of Yarrah Estate. An assessment of infrastructure provision, road layout, pedestrian and cycle movements, open space and land use conflicts were provided as part of the original development application approval.

As the modification only applies to lot layout, it is considered road layout and environmental constraints have been considered as part of the original approval. However, Part C.1 Subdivision Layout, Control B. requires *lot dimensions should protect existing vegetation to be retained and allow for a sufficient*

building envelope of at least 10m x 15m clear of easements, drainage lines and vegetation. The positioning of building envelopes is to take into consideration site access, topography, existing and proposed easements and building.

All lots subject to the modification and Clause 4.6 variation request are capable of establishing a building envelope of 10m x 15 clear of constraints.

In addition to the above, each lot is able to facilitate a dwelling that meets Part D1 – Single Dwellings in the DCP. Specifically front setbacks of 4.5m, side setbacks of 0.9m and a site coverage of 0.5:1.

3.2.4. Consistency with Yarrah Development Guideline

The Yarrah Development Guideline (Guideline) was prepared prior to the Yass Valley Development Control Plan and was prepared in such a way as to provide the basis for a Development Control Plan. The Guideline has been applied through the assessment of previous development applications.

Building form and Building Envelope in the guideline guides lot layout. Table 4 contains building setbacks (below), consistent with the SEPP (Exempt and Complying Development) 2008. Each lot is capable of meeting the setback depicted below.

Table 4 Setbacks

Lot Size		>300m ² -900m ²	>900m ²
Front Setback	Building Line	4.5m	6.5m
	Articulation zone	1m	1m
	Lot Width	Building Height at any point	Min. Setback from each side boundary
	>10-18m	0-4.5m	900mm
	>10-18m	>4.5-8.5m	(building height - 4.5) / 4 + 0.9m
	>18-24m	0-4.5m	1.5m
	>18-24m	>4.5-8.5m	(building height - 4.5) / 4 + 1.5m
	>24m	0-8.5m	2.5m

Source: SEPP (Exempt and Complying Development) 2008

In addition to the above, the guideline requires minimum lot widths of 12.5m which is achieved by each lot. The smallest being lots 92, 93, 94 and 95, which have widths of 13.25m.

4. Conclusion

Having regard to the submissions within this assessment, it is requested that Council supports the proposed variation to the development standard at Clause 4.1 of the LEP, being the minimum subdivision lot size, for the following reasons:

- Compliance with the Development Standard is unreasonable and unnecessary as the objectives of the standard are achieved notwithstanding non-compliance with the standard;
- The proposal provides a better planning outcome with no significant adverse environmental impacts;
- There are sufficient environmental planning grounds to justify contravening the Development Standard;
- The proposed lots will not result in an unreasonable environmental impacts or adverse amenity outcomes;
- There is no public benefit in maintaining the strict compliance with the Development Standard.

Overall, it is considered that the proposed variation is considered appropriate and can be supported under the provisions of Clause 4.6 of the LEP.