

REQUEST TO VARY DEVELOPMENT STANDARD

DUNGOG LEP 2014

**CLAUSE 4.1 – MINIMUM SUBDIVISION LOT
SIZE**

**229 OAKENDALE ROAD, GLEN OAK, NSW 2320
LOT 49 DP826013**

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EXECUTIVE SUMMARY

Perception Planning Pty Ltd have prepared this submission because of a variation to a development standard at 229 Oakendale Road, Glen Oak, NSW 2320 (Lot 49 DP826013) (**'the site'**).

This report has been prepared to support the Development Application for a 1 into 2 lot Torrens title subdivision, regularisation of a dwelling house, and construction of a dwelling house creating detached dual occupancy. The proposed development results in proposed Lot 2 measuring less than the minimum subdivision lot size (MLS) of 60 ha applicable to the land specified under Clause 4.1 of the Dungog Local Environmental Plan (**LEP**) 2014.

Development consent is specifically sought for a 1 into 2 lot Torrens title subdivision, regularisation of a dwelling house, and construction of a dwelling house creating detached dual occupancy. The resulting development will contain a dwelling house on proposed Lot 2, and a detached dual occupancy on proposed Lot 1.

Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production 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.

Clause 4.6 of LEP 2014 provides for an appropriate degree of flexibility in applying certain development standards such as minimum subdivision lot size to achieve better planning outcomes. In summary:

- Strict adherence to the numerical minimum subdivision lot size development standard is unnecessary in the circumstances of the case.
- The proposed subdivision is consistent with the layout of the existing area, without burdening the essential services supply.
- The proposed subdivision will have a positive economic and social impact on the surrounding community by creating opportunities for future development and subsequent short term construction jobs.
- There are negligible environmental or social impacts as a result of the proposed variation.

This report demonstrates that the proposed development should not be refused on the basis of a variation to the minimum subdivision lot size resulting from the development.

TERMS AND ABBREVIATIONS

EP&A Act	Environmental Planning & Assessment Act 1979
EPI	Environmental Planning Instrument
DA	Development Application
LEP	Dungog Local Environmental Plan
LGA	Local Government Area
MLS	Minimum Lot Size
SEPP	State Environmental Planning Policy
SEE	Statement of Environmental Effects

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SITE AND PROPOSED DEVELOPMENT

1. Describe the site.

The site is located at 229 Oakendale Road, Glen Oak NSW, 2311 shown in ('the site') and has a total area of 116.78ha (**FIGURE 1**). The site is located within an existing rural residential area within the Dungog Local Government Area (LGA).

The site currently contains an existing dwelling in the southern portion of the site with an associated shed and driveway. Further ancillary development in the form of sheds exist in the same portion of the site. Access for the existing dwelling is facilitated via an existing gravel driveway from Oakendale Road. The property is zoned RU1: Primary Production. The existing Lot is sized 116.78 ha. The site consists of a varying topography, with areas of scattered vegetation, dams, managed grassland throughout and a creek running through the property.

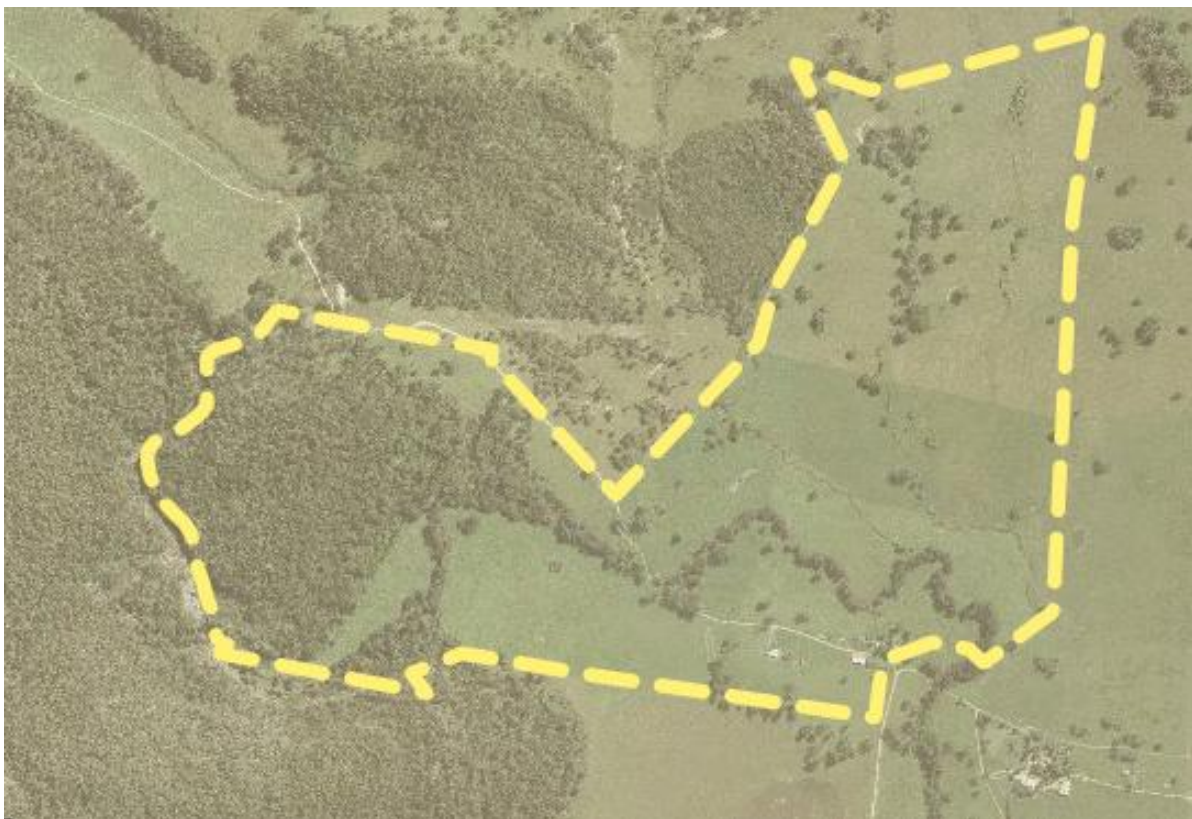


Figure 1: Satellite Image of Site (NSW ePlanning Spatial Viewer, 2026)

2. Describe the proposed development.

Key features of the proposed development include:

Proposed subdivision (one into two lots)

The proposed lots will have the following lot sizes:

- a. Proposed Lot 1 – 60.1ha

b. Proposed Lot 2 – 56.77ha

The existing lot is located within an area zoned for primary production purposes, consistent with the immediate and surrounding locality. The proposed subdivision will result in one new lot with a new dwelling entitlement (utilising an existing structure), which will continue to meet the objectives of the primary production zoning. It is therefore considered appropriate for the area in that it will have a minimal impact.

The proposed development results in a lot size of area less than the minimum subdivision lot size (MLS) applicable to the land specified under Clause 4.1 of the Dungog Local Environmental Plan (LEP) 2014.

The proposed size of Lot 2 will be 56.77ha which is 94.62% of the 60ha MLS prescribed by the Lot Size Map of LEP 2014. The proposed variation to the development standard is 3.23ha or 5.38%. Lot 1 will have a compliant minimum lot size of 60.01ha.

PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

3. What is the environmental planning instrument/s you are seeking to vary?

Dungog Local Environmental Plan 2014

4. What is the site's zoning?

RU1 Primary Production

5. Identify the development standard to be varied.

- *What is the development standard being varied?*

Minimum Subdivision Lot Size

- *What clause is the development standard listed in the EPI?*

Clause 4.1 – Minimum Subdivision Lot Size

- *What are the objectives of the development standard?*

The objectives of clause 4.1 are as follows:

- (a) *to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,*
- (b) *to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,*
- (c) *to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls,*
- (d) *to ensure that lot sizes and dimensions allow dwellings to be sited to protect natural features and retain special features such as trees and views,*
- (e) *to protect and enhance waterways by restricting the creation of new riparian rights through subdivision so as to prevent increased direct access onto rivers.*

6. Identify the type of development standard.

The development standard is numerical.

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

60ha

8. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

The proposed size of Lot 2 will be 56.77ha which is 94.62% of the 60ha MLS prescribed by the Lot Size Map of LEP 2014. The proposed variation to the development standard is 3.23ha or 5.38%. Lot 1 will have a compliant minimum lot size of 60.01ha.

9. Visual representations of the proposed variation

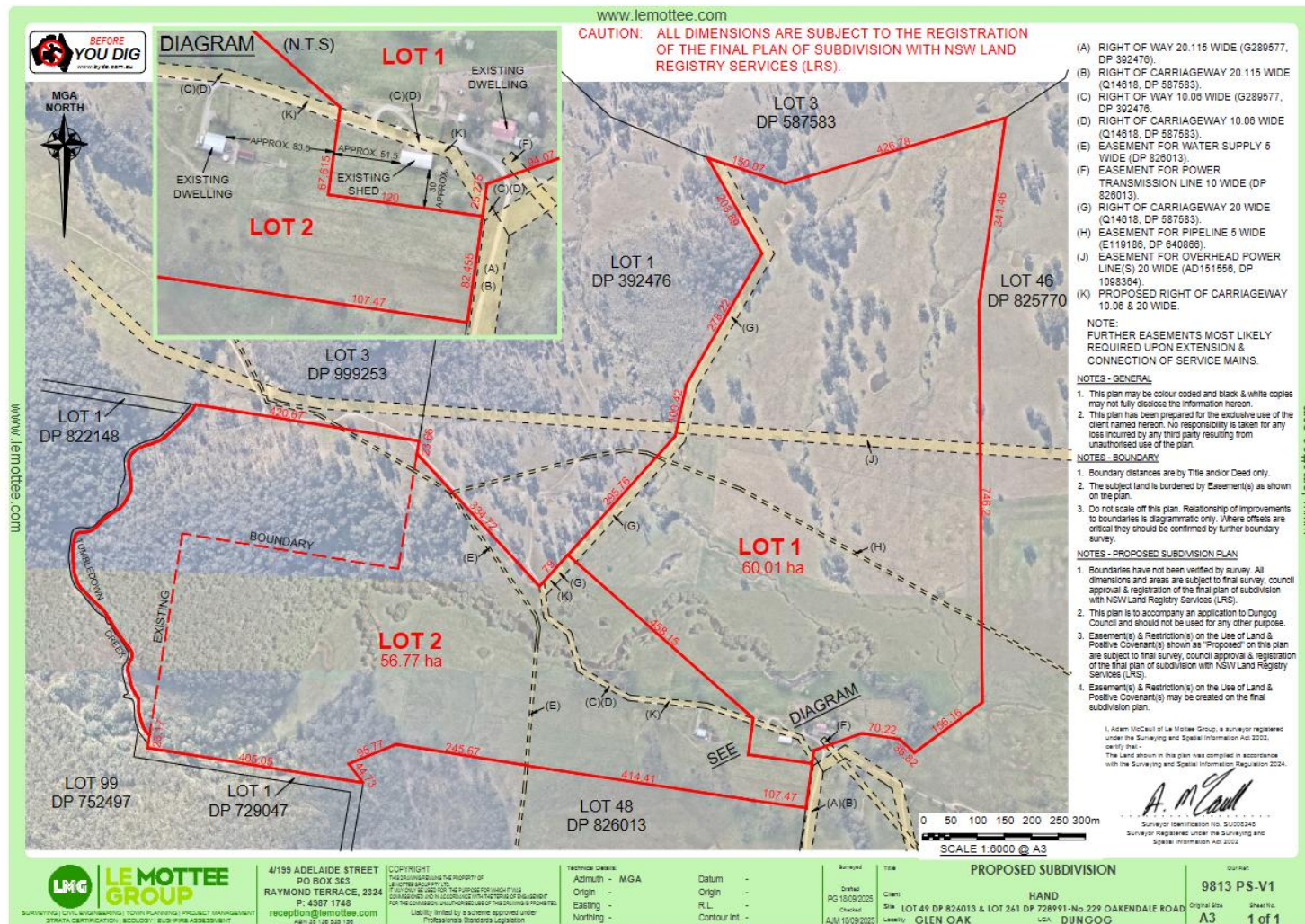


Figure 2: Proposed Subdivision Plan (Le Mottee Group, 2025)

JUSTIFICATION FOR THE PROPOSED VARIATION

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

There are five common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary (items a to e), in accordance with the Five Part Test (*Wehbe vs Pittwater Council*). The five possible ways and associated assessment are set out in **TABLE 1** below. Two of them are relevant in this case.

Table 1: Development standard compliance assessment

Are the objectives of the development standard achieved notwithstanding the non-compliance?

The first way is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The objectives of Clause 4.1 are:

- (a) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,*
- (b) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,*
- (c) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls,*
- (d) to ensure that lot sizes and dimensions allow dwellings to be sited to protect natural features and retain special features such as trees and views,*
- (e) to protect and enhance waterways by restricting the creation of new riparian rights through subdivision so as to prevent increased direct access onto rivers.*

In relation to the first objective, the proposed subdivision, notwithstanding the variation, will reflect and reinforce the existing subdivision pattern of the area. The resulting subdivision will result in lots that do not have unusual boundaries, retains a predictable subdivision pattern, and allows agricultural use of both lots to continue. Strict compliance with the development standard would not result in a change in the findings, in relation to the first objective.

In relation to the second objective, the proposed subdivision is not likely to adversely impact the amenity of neighbouring properties. The proposed subdivision essentially splits the site in half and does not strictly relate to neighbouring properties in terms of access, land use, or visual impact. Notwithstanding, the proposed subdivision, despite the proposed variation to the minimum lot size development standard, is not likely to result in future development of each new lot adversely impacting adjoining properties.

In relation to the third objective, the proposed subdivision, despite the variation to the minimum lot size development standard, will result in lot sizes and dimensions that will accommodate development that is consistent with the relevant development controls. With Lot 1 only being 3.23ha smaller than the minimum lot size, this is not likely to result in a significant restriction in opportunity for the site, compared to a strict compliance with this development standard.

In relation to the fourth objective, the proposed subdivision, notwithstanding the variation to the minimum lot size development standard, does not adversely impact the appropriate siting of existing and future dwellings on the site to protect natural features and retain special features such as trees and views. On each lot within the subdivision, there will be substantial space to build new dwellings (where permissible), without the need to clear land. Further, trees and views are retained as a result of the subdivision, despite the variation to the minimum lot size development standard.

While proposed Lot 2 may be able to facilitate one additional dwelling in the future, Clause 6.11 of the Dungog LEP 2014 would ensure that the lot would not become fragmented or result in any adverse effects for neighbouring properties.

The proposed subdivision proposes a boundary line across Tumbledown Creek. Notwithstanding the variation to the development standard, the proposed subdivision's intent is to assist in creating a new dwelling entitlement for Lot 1, rather than to increase riparian rights. The creek will retain the same condition as a result of the proposed subdivision.

Taking the above into consideration, the objectives of the development standard are achieved notwithstanding non-compliance with the standard. Thus, strict compliance with the standard is unnecessary in the circumstance of this case.

Are the underlying objectives or purpose of the development standard not relevant to the development?

N/A – Not relevant in this case.

Would the underlying objective or purpose be defeated or thwarted if compliance was required? (Give details if applicable)

A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

The underlying objective of the development standard is to provide for subdivision where lot sizes can accommodate suitable development that is consistent with relevant development controls and promotes the ecologically, socially, and economically sustainable subdivision of land.

Strict compliance with the development standard for minimum lot size would restrict and prevent the available land uses in contradiction to the objectives and permissible land uses of the zone, particularly how close to compliance the proposed subdivision is.

To this extent, the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?

N/A – Not relevant in this case.

<i>Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?</i>
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N/A – Not relevant in this case.

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

Environmental planning grounds that justify contravening the development standard are detailed below.

Zone objectives and public interest

- The land use zone at the date of this report is RU1 Primary Production. The objectives of the zone include:
 - *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
 - *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
 - *To minimise the fragmentation and alienation of resource lands.*
 - *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
 - *To provide for recreational and tourist activities that are compatible with the agricultural, environmental and conservation value of the land.*
 - *To promote the rural amenity and scenic landscape values of the area and prevent the silhouetting of unsympathetic development on ridgelines.*

Despite the variation, the development is in the public interest as is consistent with the above-mentioned objectives:

- The resultant lot layout will create an additional lot that is capable of sustaining primary industry production and maintaining the natural resource base, therefore encouraging diversity in primary industry enterprise.
- The proposed subdivision will ensure that there is minimal conflict between land uses within the zone and adjoining zones.
- The proposed subdivision will continue to promote the rural amenity and scenic landscape values of the area through the lack of adverse impacts identified.

The proposed variation results from the desire to create a more suitable lot layout to allow for the continued/future use of the site, as well as an additional dwelling, that is in the public interest and, compliant with the DCP controls and objectives of the RU1 Primary Production zone.

The proposed additional dwelling will further support the ongoing agricultural use and opportunity for the site.

The proposed subdivision, and resultant clause 4.6 variation has been applied to achieve subdivision of the land, which will in turn enable provision of a rural residential lot for development to meet the housing needs of the community, without compromising rural or agricultural capabilities of the land.

This variation sought to Clause 4.1 of LEP 2014 is considered acceptable in this instance as it will allow for a development that contributes to the zone objectives of the respective property owners.

12. Is there any other relevant information relating to justifying a variation of the development standard? *(If required)*

Not applicable.

CONCLUSION

In summary, through this Clause 4.6 analysis it has been found that:

- Strict adherence to the numerical minimum subdivision lot size development standard is unnecessary in the circumstances of the case.
- The proposed subdivision is consistent with the layout of the existing area, without burdening the essential services supply.
- The proposed subdivision will have a positive economic and social impact on the surrounding community by creating opportunities for future development and subsequent short term construction jobs.
- There are negligible environmental or social impacts as a result of the proposed variation.