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17 April 2025

Chief Executive Officer
Bega Valley Shire Council
PO Box 492
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Revised Clause 4.6 Variation Request – Minimum Lot Sizes

Description: Proposed 'Wolumla Valley Estate' Concept Master Plan and First Stage of Development

Property: Lot 2 DP1287077, No. 22 Mine Lane, Wolumla NSW

1. Introduction

This revised Clause 4.6 variation request has been prepared by PLANNED Town Planning Solutions on behalf of Junor Investments Pty Ltd (also referred to as the **Proponent**). It is submitted to Bega Valley Shire Council in support of undetermined Development Application (DA) No. 2023.351 (PAN-400459) proposing a Concept Master Plan for the 'Wolumla Valley Estate' Project Area and the first stage of development (Stage 1) comprising the subdivision of the land and associated civil construction works.

Clause 4.6 of the Bega Valley Local Environmental Plan 2013 (**BVLEP 2013**) enables the Bega Valley Shire Council to grant consent for the development proposed despite it contravening the prescribed development standards relating to minimum subdivision lot size. The main aim of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6(3) enables Bega Valley Shire Council to consider a request from the Applicant that seeks to justify contravention of the development standard/s and states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that:

- The applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- The applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

The Land and Environment Court has established a set of factors to guide the assessment of whether a variation to a development standard should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under State Environmental Planning Policy 1 – Development Standards (**SEPP 1**). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827.

While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a). Further guidance on Clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

The relevant findings of these cases have been considered in the preparation of this revised Clause 4.6 Variation Request.

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In accordance with the BVLEP 2013 requirements, this revised Clause 4.6 Variation Request identifies:

- The proposed development to which the variation request applies (refer to **Section 3**).
- The development standard to be varied and the extent of the variation sought (refer to **Section 4**).
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (refer to **Section 5.1**).
- Demonstrates that there are sufficient environmental planning grounds to justify the contravention (refer to **Section 5.2**).
- Demonstrates that the proposed variation is in the public interest because it is consistent with the objectives of the particular development standard, and the objectives for development within the zone in which the development is proposed to be carried out (refer to **Sections 5.2.1**).

This revised Clause 4.6 Variation Request relates to the development standard for minimum subdivision lot size under Clause 4.1 of the BVLEP 2013 and should be read in conjunction with the following supporting documents:

- Revised Engineering Concept Design for Concept Master Plan [dated April 2025] prepared by OCRE.
- Revised Engineering Concept Design for Development Application [dated April 2025] prepared by OCRE.
- Revised Wolumla Valley Estate Concept Master Plan [dated April 2025] prepared by Human Habitats and PLANNED.
- Revised Statement of Environmental Effects (**SEE**) Report [dated April 2025] prepared by PLANNED.

2. Site Description and Surrounding Locality Context

2.1. Site Description

The subject is described as Lot 2 DP1287077, No. 22 Mine Lane, Wolumla NSW.

The subject land was created as part of the staged subdivision of Lot 663 DP1259105 to create two (2) development superlots, being Lots 1 and 2 DP1287077 and the subdivision of Lot 1 DP1287077 to create forty-five (45) residential allotments – refer to DA2007.759 (as modified). With reference to **Figure 1** below, the subdivision works associated with the delivery of the residential allotments are close to being completed.

The subject site is an irregular shaped parcel of land comprising an area of approximately 69.2 hectares. The site has frontages to Scott Street/Candelo-Wolumla Road (north), Ferndale Lane (west), Bega Street (east) and Mine Lane (east/southeast) measuring approximately 590m, 1,030m, 20m and 760m respectively. The subject land is predominantly undeveloped comprising a cluster of old, detached farm buildings near to the Bega Street frontage. These farm buildings were once associated with the historic ‘cottage on rise’ (I683), which is now located on adjoining Lot 1 DP1287077 (or proposed Lot 1 in the approved subdivision of Lot 1 DP1287077). Collectively, these buildings were once utilised as part of the subject land’s long history of agricultural use – dating back to the mid- 1800s.

The past agricultural use of the subject land has altered the original woodland/forest vegetation through successive years of livestock grazing and routine land management activities. This has included removal of the native tree and shrub layer and simplification of the ground layer over time. Notwithstanding, there is a pocket of intact, remnant native forest vegetation restricted to the southeastern corner of the site as well as mature paddock trees scattered over the subject land.

The topography of the subject land is noted to be undulating comprising spur crests, simple slopes, drainage depressions (unnamed) and a number of dams. The slope profiles are varied ranging from level spur crests to steeply sloping (i.e., ≥20%). Given the undulating and elevated landforms, extensive views over Wolumla village and the adjacent rural/rural residential surrounds are afforded to a large proportion of the subject land.

As prescribed by the provisions of the Bega Valley Local Environmental Plan 2013, the subject land is located within an R2 Low Density Residential Zone (circa 45.2 hectares), RU5 Village Zone (circa 1.2 hectares), C3 Environmental Conservation Zone (circa 15.8 hectares) and C4 Environmental Living Zone (circa 7.2 hectares) and has a minimum corresponding

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minimum lot size for the purpose of erecting a dwelling and/or conventional (Torrens title) subdivision of 650m², 1,000m², and 7 hectares respectively.



Figure 1: Site-specific Context (MapBrowser | Nearmap, accessed 9 November 2023)

2.2. Locality Context

The subject land is situated adjacent to the existing village of Wolumla, which is within the Bega Valley Shire Council (**BVSC**) local government area (**LGA**).

Wolumla village is situated to the west of the Princes Highway, approximately eighteen (18) kilometres south of Bega and ten (10) kilometres northwest of Merimbula. The village has a population of approximately 700 people and consists of predominantly low-density residential housing with a small commercial core located at the junction of Scott Street and Bega Street. The commercial area comprises a hotel/pub and a general store, which also doubles as a post office and newsagent. The main street, being Scott Street, also comprises a volunteer-run Rural Fire Service (**RFS**) station, historic community hall as well as a number of historic cottages. The historic character of Scott Street has local heritage significance and forms the basis of the Wolumla Heritage Conservation Area (C672) as per the Bega Valley Local Environmental Plan 2013.

Recently, BVSC has re-zoned approximately 75 hectares of land adjacent to the existing village, which is expected to accommodate approximately 850 new homes or 1,800 people. The subject land forms part of the urban release area and is located adjacent to the southern edge of the existing Wolumla village – refer to **Figure 2** below.

The subject land as shown in **Figure 1** (above) is generally bounded by:

- Part of the Yurammie State Conservation Area and Policemans Cap Hill – adjoining to the south/southeast.
- Developed rural residential allotments on the opposite side of Mine Lane and Ferndale Lane – adjoining the subject land to the east/southeast and west respectively.
- Developed, low density residential/village allotments – adjoining to the east/northeast fronting Philip Street and Bega Street, and to the north fronting Scott Street/Candelo-Wolumla Road.

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- An under construction low density residential subdivision – adjoining the northern portion of the subject land.

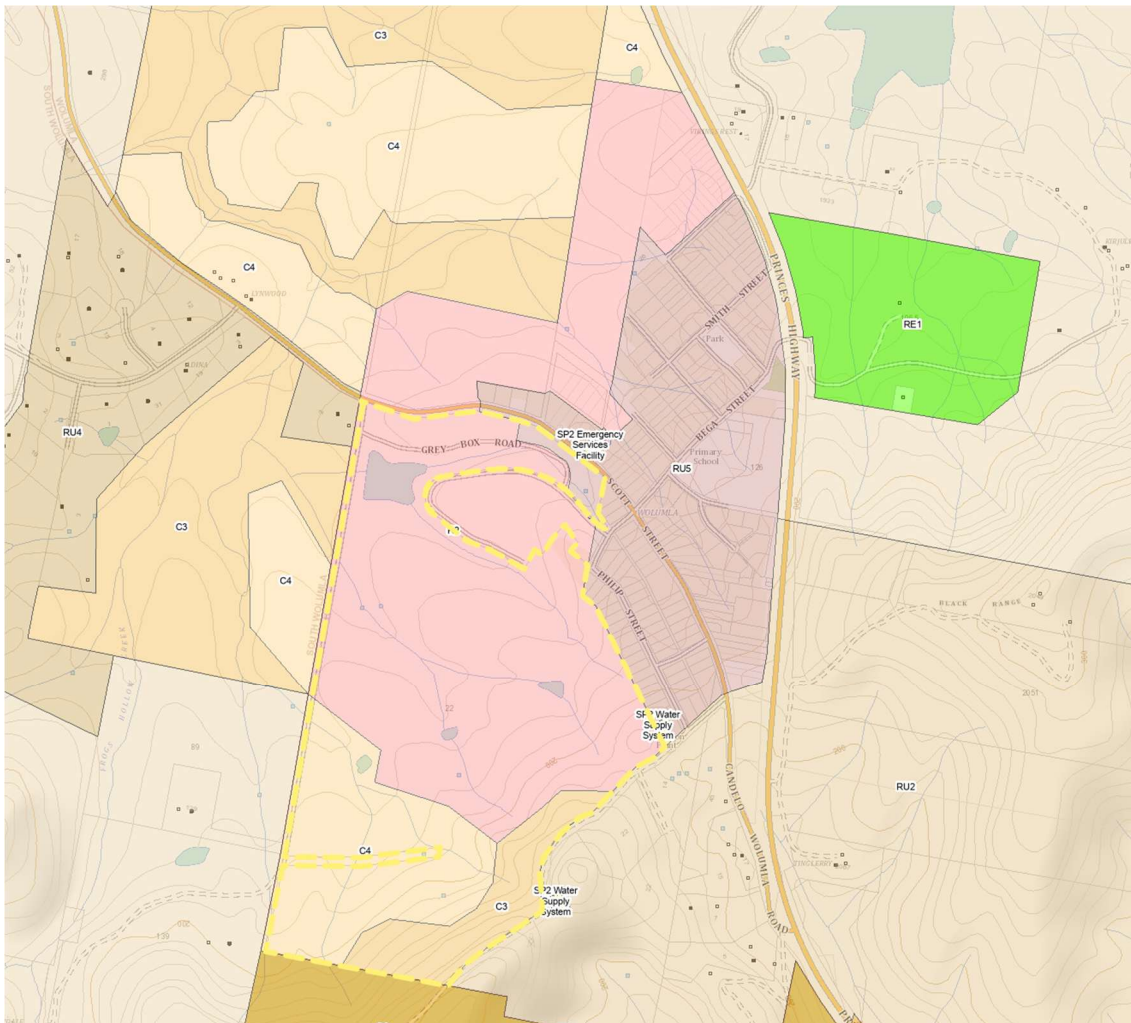


Figure 2: BVLEP 2013 Land Use Zone Overlay

3. Proposed Development

In accordance with Section 4.22 of the EP&A Act, the development proposal has been lodged as a Concept Development Application comprising:

- A Concept Master Plan that sets out the concept proposal for the development of the Wolumla Valley Estate Project Area (which will guide detailed proposals for the separate future stages)
- The detailed proposal for the first stage of development, being Stage 1 (and its sub-stages) – being, Torrens title subdivision for the creation of 136 residential allotments, one (1) allotment for future commercial development, four (4) allotments for water sensitive urban design and/or public open space purposes and one (1) residual allotment for the future stages of development, associated civil construction works, landscaping and tree removal.

The above elements of the proposed development are detailed further in the accompanying revised SEE Report and the revised Wolumla Valley Estate Concept Master Plan.

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4. Development Standard to be Varied and the Rationale for the Variation Sought

This revised Clause 4.6 Variation Request seeks to justify contravention of the development standard set out in Clause 4.1 of the BVLEP 2013 as it relates to the Stage 1 Project Area.

Noting that the subsequent stages of Wolumla Valley Estate are to form the subject of future Development Applications any variations to adopted development standards would be detailed and proposed at that time. Whilst the Wolumla Valley Estate Concept Master Plan provides a subdivision layout for the subsequent future stages, it is deemed to be conceptual only.

As relevant to the Stage 1 Project Area, Clause 4.1 provides that the minimum subdivision lot size is:

- 650m² for that part of the subject land within Zone R2 Low Density Residential.
- 1,000m² for that part of the subject land within Zone RU5 Village.

Figure 3 below shows an overlay of the minimum prescribed lot size zones as they relate to the Stage 1 Project Area.

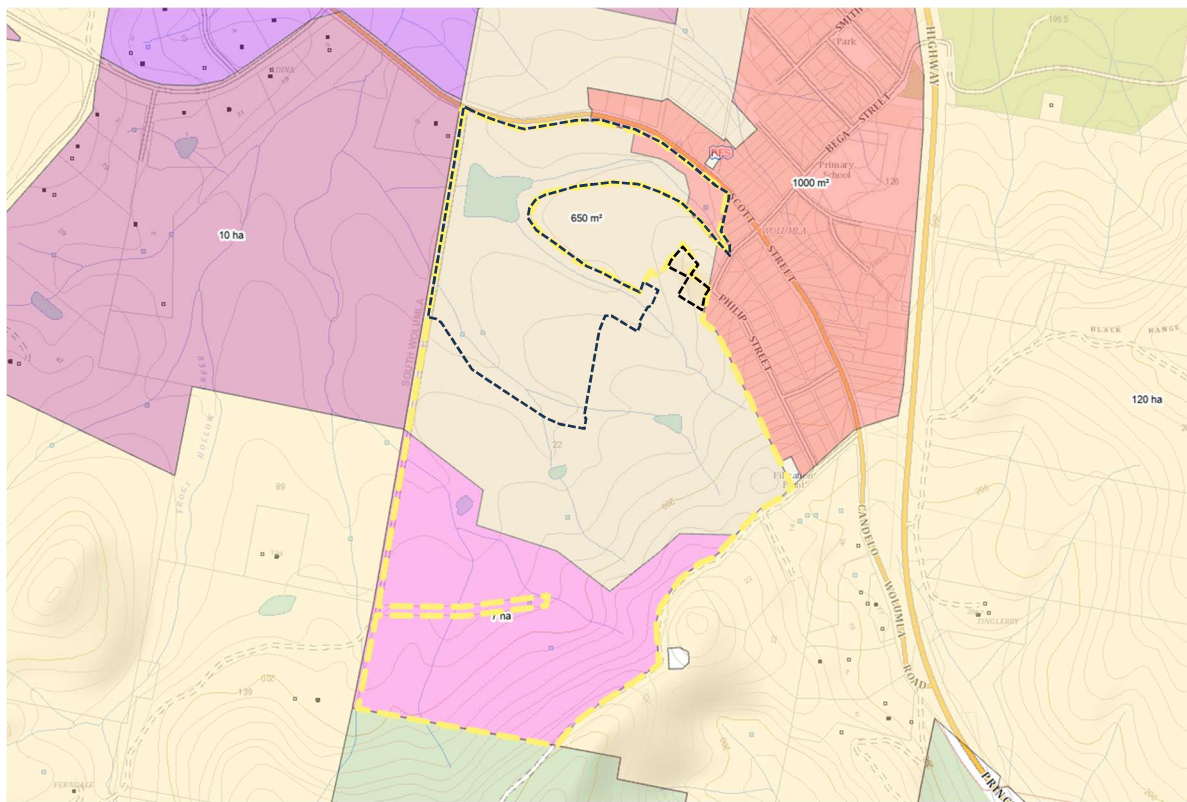


Figure 3: BVLEP 2013 Minimum Subdivision Lot Size Overlay with Stage 1 Project Area [outlined black].

With reference to the revised Stage 1 Lot Yield Plan and revised Proposed Plan of Subdivision [Drawing Nos. 2109-L01LOT, L05POS and L06POS] prepared by OCRE and **Table 1** below, 47 (or 34.56%) of the 136 residential allotments proposed are noted to be compliant with the relevant prescribed minimum lot size (highlighted 'green'). The remaining 89 allotments are variably non-compliant – with variations generally as follows:

- For the allotments wholly within Zone R2 Low Density Residential, the extent of the variation ranges between 20m² (or 3.08%) up to 200m² (or 30.77%).
- For the allotments with a split zoning (i.e., those partially within Zone R2 Low Density Residential and Zone RU5 Village), being proposed Lots 1, 37, 38, they are variably non-compliant as follows:

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- Proposed Lot 1 is predominantly zoned RU5 Village and has a site area of 650m², which equates to a variation of 350m² (or 58.85%). This allotment is compliant with the prescribed 650m² minimum lot size provision for land within Zone R2 Low Density Residential.
- Proposed Lot 37 is predominantly zoned R2 Low Density Residential and has a site area of 456m², which equates to a variation of 194m² (or 29.85%). It is also non-compliant with the prescribed 1,000m² minimum lot size for the RU5 Village Zone, being a variation of 544m² (or 54.40%).
- Proposed Lot 38 is predominantly zoned RU5 Village and has a site area of 458m², which equates to a variation of 542m² (or 54.20%). It is also non-compliant with the prescribed 650m² minimum lot size for the R2 Low Density Residential Zone, being a variation of 192m² (or 29.54%).

It is important to note that the revised design represents an improvement to the originally proposed design, which comprised only 26 (or 15.29%) compliant allotments out of the 170 allotments proposed. The remaining 144 (or 84.71%) allotments were variably non-compliant.

As per the Clause 4.6 Variation Report [dated 19 December 2023] included with the DA submission, the originally proposed variations to the prescribed minimum lot size standards were considered to be justified given the presence of Draft Planning Proposal – Residential Land Strategy – Increase Housing Diversity (hereafter referred to as the **Draft Housing Diversity PP**), which was at the finalisation stage when the DA was lodged.

The stated intent of the Draft Housing Diversity PP was to implement certain recommendations of the Bega Valley Shire Residential Land Strategy 2040 and the Bega Valley Shire Affordable Housing Strategy to increase housing diversity throughout the Bega Valley Shire whilst protecting neighbourhood character. Specifically, the Draft Housing Diversity PP sought to enable more subdivision in sewered villages and to enable the creation of small lots in new R2 Low Density Residential Zone subdivisions to be smaller than the mapped minimum lot size, but no smaller than 350m².

In relation to Wolumla, the Draft Housing Diversity PP sought to amend the Lot Size Map and to insert a new clause into Part 4 – Principal Development Standards of the BVLEP 2013 as follows:

Wolumla Lot Size Map

- Reduce the minimum lot size in Zone RU5 Village from 1,000m² to 600m².
- Reduce the minimum lot size in Zone R2 Low Density Residential from 650m² to 600m².

New Clause – Exceptions to minimum lot sizes in zone R2 Low Density Residential

- 1) The objective of this clause is to provide flexibility to ensure residential development makes efficient use of land and infrastructure and contributes to the availability of new housing whilst preserving residential amenity and natural assets.
- 2) This clause applies to land in the following zones –
 - a) Zone R2 Low Density Residential
- 3) Despite clause 4.1(3), development consent may be granted to the subdivision of land to which this clause applies if –
 - a) The land will be serviced by reticulated water and sewer, and
 - b) Up to 40% of the new lots may be smaller than the mapped minimum lot size but shall not be less than 350 square metres, and
 - c) All lots smaller than the mapped minimum lot size specified under clause 4.1(3) shall not be battle axe configuration.

As a result of concerns relating to the potential flood hazard associated with Newlands Creek / Frogs Hollow Creek, the Department of Planning, Housing and Infrastructure decided to expressly exclude Wolumla from the gazetted Increase Housing Diversity amendments to the BVLEP 2013 (Amendment No. 43) – which were published on 19 June 2024.

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Noting Council's clear strategic intent for Wolumla to be included, it is understood that Council has since commissioned a Flood Study for Wolumla – focussing on Newlands Creek / Frogs Hollow Creek. Whilst the results of the Flood Study have not yet been made available to the public, conversations with Council staff have indicated that the subject land has not been found to be flood prone. On this basis, Council will likely prepare a new Planning Proposal seeking for the previously proposed housing diversity amendments to be applied to those parts of Wolumla Village that are not flood prone.

On the hypothetical assumption that the above (future) proposed amendments to the BVLEP 2013 will be adopted, 76 (or 55.88%) of the residential allotments proposed within Stage 1 would be compliant with the proposed 600m² minimum lot size for land within Zones R2 Low Density Residential and RU5 Village (as highlighted 'green' and 'blue' in **Table 1** below). The remainder of the residential allotments, being 60 (or 44.12%) are proposed to smaller than the proposed 600m² minimum lot size, but not less than 350m². Specifically, the remainder of the allotments are proposed to range in size between 450m² – 599m². None of the 'small allotments' are proposed to be of a battle-axe configuration.

Whilst the above (future) proposed amendments also prescribe a maximum 40% of new allotments within a subdivision that can be less than the mapped minimum lot size, it is proposed that 44.12% of the Stage 1 allotments be permitted to be 'small allotments' so as to maximise residential density within the areas of Wolumla Valley Estate that have the highest amenity. In particular, the areas within close proximity to the main public open space network, retail precinct and public transport connections (i.e., bus stops) as well as the existing Wolumla 'civic core'.

With reference to the revised Stage 2 – 10 Lot Yield Plan and revised Concept Arrangement Plan [Drawing Nos. 2109-L02LOT and P01GA] prepared by OCRE, the later stages of the Wolumla Valley Estate Concept Master Plan (being Stages 2 – 10) are proposed to comprise 255 variably sized residential allotments. Of these allotments, 79 (or 30.98%) are proposed to be 'small allotments'. As per Stage 1, the 'small allotments' proposed within Stages 2 – 10 are to range in size between 450m² – 599m², would be located in areas of high amenity and would be suitably designed and orientated so as to permit future residential development and to optimise solar access.

Together with the 60 'small allotments' proposed within Stage 1, the Wolumla Valley Estate Concept Master Plan proposes a collective total of 139 (or 35.55%) 'small allotments', which represents an overall compliant outcome with the maximum 40% (future) proposed development standard.

Further, in accordance with the Increase Housing Diversity amendments to the BVLEP 2013, the Bega Valley Development Control Plan (**BVDCP**) has recently been amended to include updated subdivision standards that seek to support the integration of small lots into new neighbourhood design. The amendments to the BVDCP include a target density of 15 dwellings per hectare for new subdivisions of land zoned R2 Low Density Residential and 10 dwellings per hectare for land zoned RU5 Village.

The anticipated dwelling yield for Wolumla Valley Estate is as follows:

- Stage 1: 131 low density residential allotments and 5 multi-dwelling housing allotments. Based on an assumption of 1 dwelling per 200m² for the multi-dwelling housing allotments, a total of 52 dwellings are anticipated for those allotments. This equates to a total of 183 dwellings, which results in a density of about 10 dwellings per hectare.
- The later stages of Wolumla Valley Estate (being Stages 2 – 10) comprise 251 low density residential allotments and 4 multi dwelling housing allotments. Based on an assumption of 1 dwelling per 200m² for the multi-dwelling housing allotments, a total of 43 dwellings are anticipated for those allotments. This equates to a total of 294 dwellings, which results in a density of 8 dwellings per hectare.
- Collectively, the Wolumla Estate Concept Master Plan proposes a total dwelling yield (anticipated) of 477 dwellings equating to an overall dwelling density of 9 dwellings per hectare.
- Noting that the residential allotments with an area of 550m² or 450m² are able to be developed for dual occupancy or secondary dwelling purposes (respectively), it is anticipated that the dwelling density within Wolumla Valley Estate will be slightly higher than that calculated above.

Therefore, whilst exceedances of the maximum 40% 'small allotment' allowance are proposed as part of the Stage 1 development proposal, the anticipated dwelling density for the Estate would not be exceeded.

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Overall, the proposed lot typology and dwelling density has been informed by consideration of interface, access to amenity, landform and natural qualities so as to ensure appropriate and sensitive urban design outcomes. As such, the Stage 1 development proposal and overarching Wolumla Valley Estate Concept Master Plan are deemed to be supportable in the context of the site and its surrounds.

Irrespective of the above, given the current absence of a Draft Planning Proposal, the proposed lot size provision for Stage 1 of Wolumla Valley Estate is deemed to be appropriate and supportable given the following:

- There is a growing demand for smaller lots within the Bega Valley Shire LGA – particularly as affordability continues to challenge many buyers. This trend is noted to be largely driven by downsizing retirees and first-home buyers seeking entry into the local housing market.
- The retirees’ demographic typically seeks smaller homes or allotments with low-maintenance features located within proximity to amenities and lifestyle appeal. Generally, they value walkability, access to health care and proximity to family.
- The first-home buyer demographic is typically price-sensitive and may consider apartments or townhouses as an alternative if smaller, more ‘affordable’ homes or allotments are not available. Affordability for this demographic is key with grants and incentives playing a significant role.
- Local real estate trends are showing that properties in the small to medium range are experiencing less days on the market due to their ‘affordability’ and appeal to the broader demographic.
- Wolumla Valley Estate therefore presents an opportunity to provide appealing starter homes that bridge the gap between apartments/townhouses and standalone homes.
- Given its proximity to Bega and Merimbula, Wolumla Valley Estate also presents an opportunity to cater to the retiree demographic via the provision of smaller homes on small, low maintenance allotments that are located close to amenities and essential services.
- Prior to COVID, the lower end of the local housing market was around \$500,000. Post COVID, anything under \$800,000 is considered ‘affordable’. Wolumla Valley Estate and the proposed small lot offering will provide opportunities for the delivery of ‘affordable’ house and land packages (i.e., less than \$800,000), which would be greatly welcomed by first home buyers and retirees alike.
- Smaller lots encourage smaller homes, which have greater environmental efficiencies – particularly with regards to electricity usage (important for those on a tight budget and in context with the current cost of living crisis).
- The revised layout and geometry of the Stage 1 development proposal is deemed to be sufficient in enabling future development to be suitably separated / setback – respecting the existing rhythm of development within Wolumla as well as the curtilage, setting and prominence of existing heritage items in the existing streetscapes. This is achieved by:
 - The provision of allotments that comprise compliant minimum lot sizes where they adjoin or are adjacent to Candelo Wolumla Road, Scott Street and/or existing developed village lots (i.e., those fronting Bega Street and Philip Street).
 - The provision of small lots that are larger than Council’s minimum required standard – being 350m². As proposed, the small lots range in size from 450m² up to 649m².
 - The majority of the allotments comprising a frontage width equal to or greater than 15m.
- As detailed in the revised Wolumla Valley Estate Concept Master Plan, Stage 1 will deliver high-quality public infrastructure including functional play, sporting and open space areas (circa 4 hectares) that will provide an extension to the smaller backyards – creating a sense of community coming together and allowing for easier interactions between neighbours.
- Together with the landscaped public open space areas, extensive streetscape landscaping will soften the future proposed built form and will supplement the existing tree canopy throughout Wolumla village – thus limiting impact to the vistas currently enjoyed towards the rural landscapes south of the village.

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Table 1: Lot Size Analysis of Proposed Stage 1 Residential Allotments.

Proposed Lot	Land Use Zone	Minimum Lot Size Zone	Proposed Lot Size	Extent of Variation	Proposed Minimum Lot Size Zone
STAGE 1A					
MU 151	Zone R2	650m ²	2,252m ²	N/A	600m ²
MU 152	Zone R2	650m ²	2,142m ²	N/A	600m ²
STAGE 1B					
MU 153	Zone RU5 and R2	1,000m ² and 650m ²	2,021m ²	N/A	600m ²
MU 154	Zone RU5 and R2	1,000m ² and 650m ²	2,111m ²	N/A	600m ²
17	Zone R2	650m ²	562m ²	88m ² (or 13.54%)	600m ²
18	Zone R2	650m ²	530m ²	120m ² (or 18.46%)	600m ²
19	Zone R2	650m ²	530m ²	120m ² (or 18.46%)	600m ²
20	Zone R2	650m ²	530m ²	120m ² (or 18.46%)	600m ²
21	Zone R2	650m ²	535m ²	115m ² (or 17.69%)	600m ²
22	Zone R2	650m ²	556m ²	114m ² (or 17.54%)	600m ²
23	Zone R2	650m ²	630m ²	20m ² (or 3.08%)	600m ²
24	Zone R2	650m ²	610m ²	40m ² (or 6.15%)	600m ²
25	Zone R2	650m ²	601m ²	49m ² (or 7.54%)	600m ²
26	Zone R2	650m ²	527m ²	123m ² (or 17.69%)	600m ²
27	Zone R2	650m ²	521m ²	129m ² (or 19.85%)	600m ²
28	Zone R2	650m ²	524m ²	126m ² (or 19.39%)	600m ²
29	Zone R2	650m ²	525m ²	125m ² (or 19.23%)	600m ²
30	Zone R2	650m ²	608m ²	42m ² (or 6.46%)	600m ²
31	Zone R2	650m ²	605m ²	45m ² (or 6.92%)	600m ²
32	Zone R2	650m ²	615m ²	35m ² (or 5.38%)	600m ²
33	Zone R2	650m ²	543m ²	107m ² (or 16.46%)	600m ²
34	Zone R2	650m ²	473m ²	177m ² (or 27.23%)	600m ²
35	Zone R2	650m ²	455m ²	195m ² (or 30.00%)	600m ²
36	Zone R2	650m ²	456m ²	194m ² (or 29.85%)	600m ²
37	Zone RU5 and R2	1,000m ² and 650m ²	456m ²	544m ² (or 54.40%) 194m ² (or 29.85%)	600m ²
38	Zone RU5 and R2	1,000m ² and 650m ²	458m ²	542m ² (or 54.20%) 192m ² (or 29.54%).	600m ²
STAGE 1C					
39	Zone R2	650m ²	700m ²	N/A	600m ²
40	Zone R2	650m ²	680m ²	N/A	600m ²

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Proposed Lot	Land Use Zone	Minimum Lot Size Zone	Proposed Lot Size	Extent of Variation	Proposed Minimum Lot Size Zone
41	Zone R2	650m ²	680m ²	N/A	600m ²
42	Zone R2	650m ²	680m ²	N/A	600m ²
43	Zone R2	650m ²	680m ²	N/A	600m ²
44	Zone R2	650m ²	680m ²	N/A	600m ²
45	Zone R2	650m ²	680m ²	N/A	600m ²
46	Zone R2	650m ²	800m ²	N/A	600m ²
47	Zone R2	650m ²	785m ²	N/A	600m ²
48	Zone R2	650m ²	500m ²	150m ² (or 23.08%)	600m ²
49	Zone R2	650m ²	500m ²	150m ² (or 23.08%)	600m ²
50	Zone R2	650m ²	500m ²	150m ² (or 23.08%)	600m ²
51	Zone R2	650m ²	500m ²	150m ² (or 23.08%)	600m ²
52	Zone R2	650m ²	500m ²	150m ² (or 23.08%)	600m ²
53	Zone R2	650m ²	500m ²	150m ² (or 23.08%)	600m ²
54	Zone R2	650m ²	650m ²	N/A	600m ²
STAGE 1D					
55	Zone R2	650m ²	700m ²	N/A	600m ²
56	Zone R2	650m ²	500m ²	150m ² (or 23.08%)	600m ²
57	Zone R2	650m ²	500m ²	150m ² (or 23.08%)	600m ²
58	Zone R2	650m ²	500m ²	150m ² (or 23.08%)	600m ²
59	Zone R2	650m ²	500m ²	150m ² (or 23.08%)	600m ²
60	Zone R2	650m ²	500m ²	150m ² (or 23.08%)	600m ²
61	Zone R2	650m ²	500m ²	150m ² (or 23.08%)	600m ²
62	Zone R2	650m ²	750m ²	N/A	600m ²
63	Zone R2	650m ²	858m ²	N/A	600m ²
64	Zone R2	650m ²	912m ²	N/A	600m ²
65	Zone R2	650m ²	929m ²	N/A	600m ²
66	Zone R2	650m ²	702m ²	N/A	600m ²
67	Zone R2	650m ²	600m ²	50m ² (or 7.69%)	600m ²
68	Zone R2	650m ²	600m ²	50m ² (or 7.69%)	600m ²
69	Zone R2	650m ²	450m ²	200m ² (or 30.77%)	600m ²
70	Zone R2	650m ²	450m ²	200m ² (or 30.77%)	600m ²
71	Zone R2	650m ²	450m ²	200m ² (or 30.77%)	600m ²
72	Zone R2	650m ²	450m ²	200m ² (or 30.77%)	600m ²
73	Zone R2	650m ²	450m ²	200m ² (or 30.77%)	600m ²

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Proposed Lot	Land Use Zone	Minimum Lot Size Zone	Proposed Lot Size	Extent of Variation	Proposed Minimum Lot Size Zone
74	Zone R2	650m ²	565m ²	85m ² (or 13.08%)	600m ²
75	Zone R2	650m ²	701m ²	N/A	600m ²
STAGE 1F					
76	Zone R2	650m ²	615m ²	35m ² (or 5.38%)	600m ²
77	Zone R2	650m ²	479m ²	171m ² (or 26.31%)	600m ²
78	Zone R2	650m ²	479m ²	171m ² (or 26.31%)	600m ²
79	Zone R2	650m ²	479m ²	171m ² (or 26.31%)	600m ²
80	Zone R2	650m ²	479m ²	171m ² (or 26.31%)	600m ²
81	Zone R2	650m ²	479m ²	171m ² (or 26.31%)	600m ²
82	Zone R2	650m ²	479m ²	171m ² (or 26.31%)	600m ²
83	Zone R2	650m ²	600m ²	50m ² (or 7.69%)	600m ²
84	Zone R2	650m ²	601m ²	49m ² (or 7.54%)	600m ²
85	Zone R2	650m ²	608m ²	42m ² (or 6.46%)	600m ²
86	Zone R2	650m ²	614m ²	36m ² (or 5.54%)	600m ²
87	Zone R2	650m ²	604m ²	46m ² (or 7.08%)	600m ²
88	Zone R2	650m ²	660m ²	N/A	600m ²
89	Zone R2	650m ²	660m ²	N/A	600m ²
90	Zone R2	650m ²	601m ²	49m ² (or 7.54%)	600m ²
91	Zone R2	650m ²	600m ²	50m ² (or 7.69%)	600m ²
92	Zone R2	650m ²	601m ²	49m ² (or 7.54%)	600m ²
93	Zone R2	650m ²	601m ²	49m ² (or 7.54%)	600m ²
94	Zone R2	650m ²	520m ²	130m ² (or 20.00%)	600m ²
95	Zone R2	650m ²	530m ²	120m ² (or 18.46%)	600m ²
96	Zone R2	650m ²	530m ²	120m ² (or 18.46%)	600m ²
97	Zone R2	650m ²	540m ²	110m ² (or 16.92%)	600m ²
98	Zone R2	650m ²	540m ²	110m ² (or 16.92%)	600m ²
99	Zone R2	650m ²	540m ²	110m ² (or 16.92%)	600m ²
100	Zone R2	650m ²	800m ²	N/A	600m ²
STAGE 1G					
1	Zone RU5 and R2	1,000m ² and 650m ²	650m ²	350m ² (or 58.85%) N/A	600m ²
2	Zone R2	650m ²	650m ²	N/A	600m ²
3	Zone R2	650m ²	650m ²	N/A	600m ²
4	Zone R2	650m ²	650m ²	N/A	600m ²
5	Zone R2	650m ²	685m ²	N/A	600m ²

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Proposed Lot	Land Use Zone	Minimum Lot Size Zone	Proposed Lot Size	Extent of Variation	Proposed Minimum Lot Size Zone
6	Zone R2	650m ²	694m ²	N/A	600m ²
7	Zone R2	650m ²	701m ²	N/A	600m ²
8	Zone R2	650m ²	706m ²	N/A	600m ²
9	Zone R2	650m ²	709m ²	N/A	600m ²
10	Zone R2	650m ²	711m ²	N/A	600m ²
11	Zone R2	650m ²	711m ²	N/A	600m ²
12	Zone R2	650m ²	713m ²	N/A	600m ²
13	Zone R2	650m ²	793m ²	N/A	600m ²
14	Zone R2	650m ²	749m ²	N/A	600m ²
15	Zone R2	650m ²	749m ²	N/A	600m ²
16	Zone R2	650m ²	809m ²	N/A	600m ²
MU 155	Zone R2	650m ²	2,021m ²	N/A	600m ²
STAGE 1I					
101	Zone R2	650m ²	800m ²	N/A	600m ²
102	Zone R2	650m ²	451m ²	199m ² (or 30.61%)	600m ²
103	Zone R2	650m ²	451m ²	199m ² (or 30.61%)	600m ²
104	Zone R2	650m ²	451m ²	199m ² (or 30.61%)	600m ²
105	Zone R2	650m ²	600m ²	50m ² (or 7.69%)	600m ²
106	Zone R2	650m ²	451m ²	199m ² (or 30.61%)	600m ²
107	Zone R2	650m ²	451m ²	199m ² (or 30.61%)	600m ²
108	Zone R2	650m ²	451m ²	199m ² (or 30.61%)	600m ²
109	Zone R2	650m ²	600m ²	50m ² (or 7.69%)	600m ²
110	Zone R2	650m ²	609m ²	41m ² (or 6.31%)	600m ²
111	Zone R2	650m ²	623m ²	27m ² (or 4.15%)	600m ²
112	Zone R2	650m ²	673m ²	N/A	600m ²
113	Zone R2	650m ²	723m ²	N/A	600m ²
114	Zone R2	650m ²	700m ²	N/A	600m ²
115	Zone R2	650m ²	600m ²	50m ² (or 7.69%)	600m ²
116	Zone R2	650m ²	658m ²	N/A	600m ²
117	Zone R2	650m ²	744m ²	N/A	600m ²
118	Zone R2	650m ²	700m ²	N/A	600m ²
119	Zone R2	650m ²	624m ²	26m ² (or 4.00%)	600m ²
120	Zone R2	650m ²	626m ²	24m ² (or 3.69%)	600m ²
121	Zone R2	650m ²	600m ²	50m ² (or 7.69%)	600m ²

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Proposed Lot	Land Use Zone	Minimum Lot Size Zone	Proposed Lot Size	Extent of Variation	Proposed Minimum Lot Size Zone
122	Zone R2	650m ²	609m ²	41m ² (or 6.31%)	600m ²
123	Zone R2	650m ²	451m ²	199m ² (or 30.61%)	600m ²
124	Zone R2	650m ²	451m ²	199m ² (or 30.61%)	600m ²
125	Zone R2	650m ²	600m ²	50m ² (or 7.69%)	600m ²
126	Zone R2	650m ²	451m ²	199m ² (or 30.61%)	600m ²
127	Zone R2	650m ²	451m ²	199m ² (or 30.61%)	600m ²
128	Zone R2	650m ²	564m ²	86m ² (or 13.23%)	600m ²
129	Zone R2	650m ²	593m ²	57m ² (or 8.77%)	600m ²
130	Zone R2	650m ²	544m ²	106m ² (or 16.31%)	600m ²
131	Zone R2	650m ²	557m ²	93m ² (or 14.31%)	600m ²

5. Justification for contravention of the development standard

Clause 4.6(3) of the BVLEP 2013 provides that:

- 3) *Development consent must not be granted for 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 of the case, and*
 - b) *there are sufficient environmental planning grounds to justify contravening the development standard.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court and the NSW Court of Appeal in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827; and
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.

The relevant matters contained in Clause 4.6 of the BVLEP 2013, with respect to the minimum subdivision lot size development standard, are each addressed below, including with regard to the above NSWLEC decisions.

5.1. Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe v Pittwater Council* [2007], Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe v Pittwater Council* [2007] related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis can be of assistance to variations made under Clause 4.6 where subclause 4.6(3)(a) uses similar language as clause 6 of SEPP 1 (see *Four2Five Pty Ltd v Ashfield Council* [2015] at [61] and [62]).

As the language used in Clause 4.6(3)(a) of the BVLEP 2013 is similar to the language used in Clause 6 of SEPP 1, the principles contained in *Wehbe v Pittwater Council* [2007] are of assistance to this revised Clause 4.6 Variation Request.

The five methods outlined in *Wehbe v Pittwater Council* [2007] include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).

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- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- 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 Method**).
- 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 or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary, is the **First Method**.

5.1.1. The underlying objectives or purposes of the development standard are achieved notwithstanding non-compliance with the standard

The objective of the development standard contained in Clause 4.1 of the BVLEP 2013 is included and addressed in the Table below.

Objective	Comment
a) To provide controls for the subdivision of land in order to achieve the objectives of the relevant zone.	The Stage 1 development proposal will not compromise the intent of this objective.

The development proposed is consistent with the objectives of the R2 Low Density Residential Zone and RU5 Village Zone, as demonstrated in the Table below.

Objective	Comment
R2 Low Density Residential Zone	
a) To provide for the housing needs of the community within a low-density residential environment.	The proposed Stage 1 subdivision design incorporates a range of lot sizes that will encourage diverse housing styles, sizes and tenures, within a low-density environment. Whilst the Stage 1 proposal seeks to maximise residential yield within areas of high amenity, the anticipated dwelling density will be less than that nominated for the R2 Low Density Residential Zone in the BVDCP. This outcome is further reflected in the Wolumla Valley Estate Concept Master Plan, which balances the overall residential yield in line with the expectations of the recent amendments to the BVLEP 2013 and accompanying BVDCP – particularly with regard to the integration of small lots into new neighbourhood design. Such amendments are expected to apply to the site in the future following the adoption of the Wolumla Flood Study and the resultant further amendments to the BVLEP 2013. Refer also to the comments at Section 4 of this revised Report, which demonstrates how Stage 1 (and Wolumla Valley Estate) will align with current housing market trends and expectations.
b) To enable other land uses that provide facilities or services to meet the day to day needs of residents.	As detailed in the revised SEE Report and the revised Wolumla Valley Estate Concept Master Plan, the Stage 1 development proposal incorporates a number of facilities that will contribute to

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	meeting the daily needs of residents of Wolumla Valley Estate as well as Wolumla Village residents beyond. In particular – ▪ The main public open space corridor inclusive of the open space landscape plantings, constructed wetlands, integrated pedestrian pathway network, functional playground, sports facilities and strategically placed open space furniture. ▪ The creation of an allotment for the delivery of a Retail Precinct, which will enable its future development for neighbourhood commercial purposes.
RU5 Village Zone	
a) To provide for a range of land uses, services and facilities that are associated with a rural village	The extent of the RU5 Village Zone within Stage 1 is 1.18 hectares. With reference to the revised Land Zones Plan [Drawing No. 2109-P04ZN] prepared by OCRE, the land zoned RU5 Village is proposed to comprise one allotment for future development as a retail precinct (Lot 161), two multi-dwelling housing allotments (MU Lots 153 and 154) and three standard, low density housing allotments (Lots 1, 37 and 38). Noting that the intended future use of the allotments aligns with the land uses permissible with consent within the RU5 Village Zone, it is expected that future development would contribute positively to Wolumla Village whilst also being sympathetic to its existing character.
b) To ensure that development maintains and protects the village character.	

5.2. Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

There are sufficient environmental planning grounds to justify the proposed variations to the minimum lot size development standard, including:

- The proposed development responds to identified growth patterns and housing requirements for the Bega Valley Shire through the provision of variably sized residential allotments, which will encourage diverse housing styles, sizes and tenures – appropriate for the growing and aging population and changing nature of household structure.
- The proposed development would enhance local identity by facilitating neighbourhood commercial development that delivers convenience to the existing and future Wolumla context and by delivering a variety of open space character and function to facilitate a range of different experiences to users.
- Through sustainable urban design practices, the development proposed addresses community expectations relating to sustainable growth whilst preserving environmental quality and land use diversity.
- The development proposed promotes the efficient use and provision of existing infrastructure.
- The proposal would have no adverse impact on the Bega Valley Shire’s social, cultural and economic diversity.
- The proposal is consistent with adopted regional and local strategic land use policy as relevant.

5.2.1. Overall public interest

The proposed lot size variation is deemed to be in the public interest in that it would facilitate the development as proposed, which would have the following benefits:

- Provision for diverse housing styles, sizes and tenure that is appropriate for the local demographic characteristics and expectations.
- Investment in design that would ensure that urban change creates amenity, diversity and a more sustainable built form.

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- Facilitate the development of a more prosperous Bega Valley region by encouraging a greater diversity of housing type and lifestyle opportunity without adverse environmental consequence and/or impact on existing service infrastructure.
- The presentation of a well-designed, high quality and engaging residential estate, which will set a benchmark for future development within the Wolumla urban release precinct.
- Flow-on economic benefits associated with the delivery of new housing – i.e., increasing the residential population within proximity to established villages and urban centres, who will access supporting businesses and services.
- Creation of temporary construction positions and permanent employment positions associated with the construction phase of the development proposed.

6. Conclusion

For the reasons outlined above, it is considered that the variations to Clause 4.1 of the BVLEP 2013 are well-founded and that the granting of a Clause 4.6 Variation to this development standard is appropriate in the circumstances of the case. Furthermore, the variations are considered to be well founded for the following reasons as outlined in Clause 4.6 of the BVLEP 2013, *Four2Five Pty Ltd v Ashfield Council* [2015] and *Wehbe v Pittwater Council* [2007]:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- The development is in the public interest.
- The development is consistent with the objectives of the particular standard.
- The development is consistent with the objectives for development within the zones.
- The development is consistent with relevant adopted regional and local strategic land use policy.
- The public benefit in maintaining strict compliance with the development standard would be negligible.

Overall, it is considered that the proposed Clause 4.6 Variation to the minimum prescribed subdivision lot size is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.6 of the BVLEP 2013.

Should Council require anything further in relation to the proposed Clause 4.6 Variation, please do not hesitate to contact the undersigned on 0457 786 776 or at elizabeth@planned.net.au.

Yours sincerely,

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