

CLAUSE 4.6 – REQUEST TO VARY A DEVELOPMENT STANDARD

**141 YARRAWA RD & 32
LOVELLE ST, MOSS
VALE, 'CHELSEA
GARDENS AND
COOMUNGIE LANDS'**

22 July 2019

Prepared for Prime Moss Vale Pty Ltd

URBIS

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TABLE OF CONTENTS

1.	Introduction	3
2.	Site & Surrounding Locality	4
2.1.	The Site.....	4
2.2.	Locality & Wider Context.....	5
3.	Proposed Development	7
3.1.	Overview	7
3.2.	Concept Development (masterplan)	7
3.3.	Stage 1 Detailed Works	9
3.3.1.	Overview	9
3.3.2.	Yarra Road Buffer Zone	11
4.	Section 4.15 Assessment	12
4.1.	Wingecarribee Local Environmental Plan 2010.....	12
4.2.	NSW Land and Environment Court Case LAW	13
5.	Proposed Variation to Subdivision Lot Size.....	14
6.	Assessment of Clause 4.6 Variation.....	15
7.	Summary and Conclusion.....	20
Disclaimer	21	

FIGURES:

Figure 1 – Subject Site	4
Figure 2 – Site photos.....	6
Figure 3 – Indicative Concept Master Plan.....	8
Figure 4 –Stage 1 DA Lot Layout Plan	10
Figure 5 – Identification of Part Lots 1188 fronting Yarra Road	11
Figure 6 – Yarra Road Buffer Park	11
Figure 7 – Minimum Subdivision Lot Size Map (WLEP 2010).....	12
Figure 8 – Proposed Lot 1188 – Subject to variation of minimum subdivision lot size	14
Figure 9 – Original Structure Plan supporting the rezoning of the site.....	16
Figure 10 – WLEP 2010 Land Use Zone Map Extract	18

PICTURES:

Picture 1 – A southerly vista across the site from the northern portion of the site, close to Hill Road.	6
Picture 2 – A view of the eastern precinct, looking west towards the Golf Course and Yarra Road.	6
Picture 3 – A view from the site looking north towards the steep incline to Hill Road.....	6
Picture 4 – Northern entrance to Yarra Road	11
Picture 5 – Future southern entrance to Yarra Road.....	11

TABLES:

Table 1 – Site Description.....	4
Table 2 – Site Features	5
Table 3 – Concept Application Lot yield	7
Table 4 – Stage 1 Lot yield.....	9
Table 5 – Assessment of consistency with RE1 – Public Recreation objectives	19

1. INTRODUCTION

This clause 4.6 variation request has been prepared by Urbis Pty Ltd (Urbis) on behalf of Prime Moss Vale Pty Ltd (the Applicant) in association with a Concept Development Application (Concept DA) and concurrent detailed (Stage 1) application seeking consent for a master planned residential development at 141 Yarrowa Road and 32 Lovelle Street, (the site), Moss Vale. The land is also known as 'Chelsea Gardens and Coomungie Lands'.

The Concept DA provides the overarching master plan for the entire 124-hectare site to create approximately 1,200 new lots to be delivered over multiple stages. It is recognised that all residential lots within the proposed master plan and concurrent detailed (Stage 1) fully comply with the various minimum subdivision lot size standards across the site prescribed by clause 4.1 of the *Wingecarribee Local Environmental Plan 2010* (WLEP 2010).

However, the lot created for the future buffer reserve fronting Yarrowa Road, which is identified as Lot 1188 and zoned RE1 Public Recreation, falls below the minimum prescribed lot size of 40 hectares and a variation is sought under clause 4.6 of WLEP 2010.

This report includes the following components:

- **Section 1:** Introduction.
- **Section 2:** Identification of the statutory planning framework, including relevant planning controls and Land and Environment Court case law relevant to assessment of clause 4.6 variations.
- **Section 3:** Description of the proposed siting and design of the proposed development and identification of the proposed variations to the minimum subdivision lot size development standard.
- **Section 4:** Assessment of the proposed variation to the minimum subdivision lot size in accordance with the clause 4.6 assessment framework and relevant case law.
- **Section 5:** Summary of key findings and conclusion arising from the detailed assessment.

This variation request is made pursuant to clause 4.6 of WLEP 2010. This report should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Urbis and the Master Plan Report and the Stage 1 Subdivision Plan which are included at **Appendix B** and **Appendix E** of the SEE.

2. SITE & SURROUNDING LOCALITY

2.1. THE SITE

The site comprises two adjoining lots located on the southern edge of the Moss Vale Township. The description of the subject site is outlined below.

Table 1 – Site Description

Site	Area
'Chelsea Gardens,' 32 Lovelle St (Lot 3 DP 706194), owned by Prime Moss Vale Pty Ltd	80ha
Coomungie,' 141 Yarrawa Rd (Lot 12 DP 8660366), owned by Prime Moss Vale Pty Ltd	44ha
Total	124ha

Figure 1 – Subject Site



Source: Urbis

Table 2 – Site Features

Feature	Description
Existing built improvements	A single storey dwelling house is located on the site previously known as “Coomungie”, at 141 Yarrawa Road.
Access	Vehicle access to the site is available from the following streets: <ul style="list-style-type: none"> – Yarrawa Rd on the south and west, – Lovelle St on the north-west, – Hill Road to the north.
Topography	<ul style="list-style-type: none"> – The site forms an amphitheatre rising gently from its focus on Whites Creek to three hills and their connecting ridge lines. The steepest part of the site is the hill to the north, with the two hills to the south-east of the site being the next steepest in the vicinity. – There is a substantial variation in elevation across the site, the highest point on site being in the north, at 752m AHD or 66m above the lowest point directly to the south of the golf course (686m AHD). However, most of the site is gently undulating with slopes of 0-10%, with a few localised exceptions.
Hydrology	<ul style="list-style-type: none"> – The site contains riparian corridors (first order watercourses under the Strahler system) that form tributaries to Whites Creek. – The riparian corridors contain no significant vegetation – The site currently has several dams at its north-eastern edge. – The low-lying areas of the site are flood affected in a 100-year ARI event.
Flora and Fauna	<ul style="list-style-type: none"> – The site currently comprises cleared pasture land and exhibits low ecological value due to its highly disturbed nature. Therefore, the site is largely ecologically unconstrained.
Heritage	<ul style="list-style-type: none"> – The site is unaffected by any Heritage Items identified within the WLEP 2010. – An AHIMS web search has been undertaken for the site and has identified one (1) Aboriginal site recorded in or near Lot 3, DP 706194. Assessment of aboriginal cultural heritage is addressed in the SEE.
Bushfire	<ul style="list-style-type: none"> – The site is free from bushfire impact, aside from a very small portion of the northern boundary along a creek corridor.

2.2. LOCALITY & WIDER CONTEXT

- The site is situated approximately 2km to the south-east of Moss Vale Town Centre & Railway Station.
- The site is approximately 4km south-east from the Moss Vale to Berrima Enterprise Corridor.
- The site is located adjacent to the southern edge of the existing township which is a logical location for extension of the town.
- The site as shown in Figure 1 is generally bounded by:
 - Large rural and rural residential lots to the east with lot sizes ranging from 1.5ha to 50ha.
 - Yarrawa Rd and large rural and rural residential lots to the south and west with lot sizes ranging from 4ha to 24ha.

- Hill Rd and residential part of Moss Vale to the north with lot sizes varying between 700m² and 12ha.
- Moss Vale Golf Club that directly adjoins the northern site boundary.

The site is located within the township of Moss Vale. Moss Vale is located approximately 130 kilometres south-west of Sydney, 160 kilometres north-east of Canberra and under 70 kilometres west of Wollongong.

Figure 2 – Site photos



Picture 1 – A southerly vista across the site from the northern portion of the site, close to Hill Road.



Picture 2 – A view of the eastern precinct, looking west towards the Golf Course and Yarrawa Road.



Picture 3 – A view from the site looking north towards the steep incline to Hill Road.

Source: Arterra

3. PROPOSED DEVELOPMENT

3.1. OVERVIEW

In accordance with Section 4.22 of the EP&A Act, the proposal is for a Staged Development of which consent is sought comprising:

- A Concept Development Application for residential subdivision plan (Master plan) for approximately 1,200 lots; and
- A Stage 1 Development comprising Torrens Title subdivision for the creation of 182 residential lots, two (2) lots for open space or drainage and four (4) Residue Lots, with associated works including site clearing, tree removal, bulk earthworks and construction of new roads and public infrastructure, open space and restoration of a section of the Whites Creek.

The above elements of the proposed development are detailed further in the following sections and are accompanied by the Concept Master Plan, Urban Design Report, and Stage 1 Civil Plans.

3.2. CONCEPT DEVELOPMENT (MASTERPLAN)

A Concept Development Application has been prepared seeking consent for residential development as detailed in the Masterplan prepared by Arterra and shown in Figure 3. The Masterplan provides an intended structure, principles and guidelines for future subsequent detailed development applications for land outside of Stage 1.

Concept approval is sought for development across the site including:

- General site layout in accordance with the Indicative Masterplan prepared by Arterra, also addressing new site access points, street hierarchy and water management, open space and location for a new neighbourhood centre.
- The Masterplan will create approximately 1,200 residential lots with a combination of sizes from 450sqm, 600sqm and 2,000sqm. The composition of lot yield is outlined below in Table 3.

Table 3 – Concept Application Lot yield

Item	Proposal	
Lot Types	Residential Torrens Title Lots Riparian corridor and drainage assets Open space	
Residential lot sizes	450 - 500sqm	280 - 300
	600 - 1000sqm	730 - 830
	2,000+sqm	70
Total	Approx. 1,200 residential lots	

- An amendment to Part C – Residential Zoned Land of the Moss Vale Town Plan Development Control Plan (DCP) to provide site specific controls to be assessed under Part 4 of the *Environmental Planning and Assessment Act 1979*. The site specific DCP section will be known as **Section 21, Chelsea Gardens and Coomungie Lands Precinct**.

Figure 3 – Indicative Concept Master Plan



Source: Arterra

3.3. STAGE 1 DETAILED WORKS

Concurrent with the Concept Development Application, consent is also sought for detailed works associated with Stage 1 of the project.

The detailed Stage 1 works comprises approximately 24.3 hectares and is the first of several future stages of development (subject to future development applications) for the detailed design, construction, subdivision and occupation of the area of the site shown in Figure 4.

3.3.1. Overview

The following works are proposed within the Stage 1 Proposal:

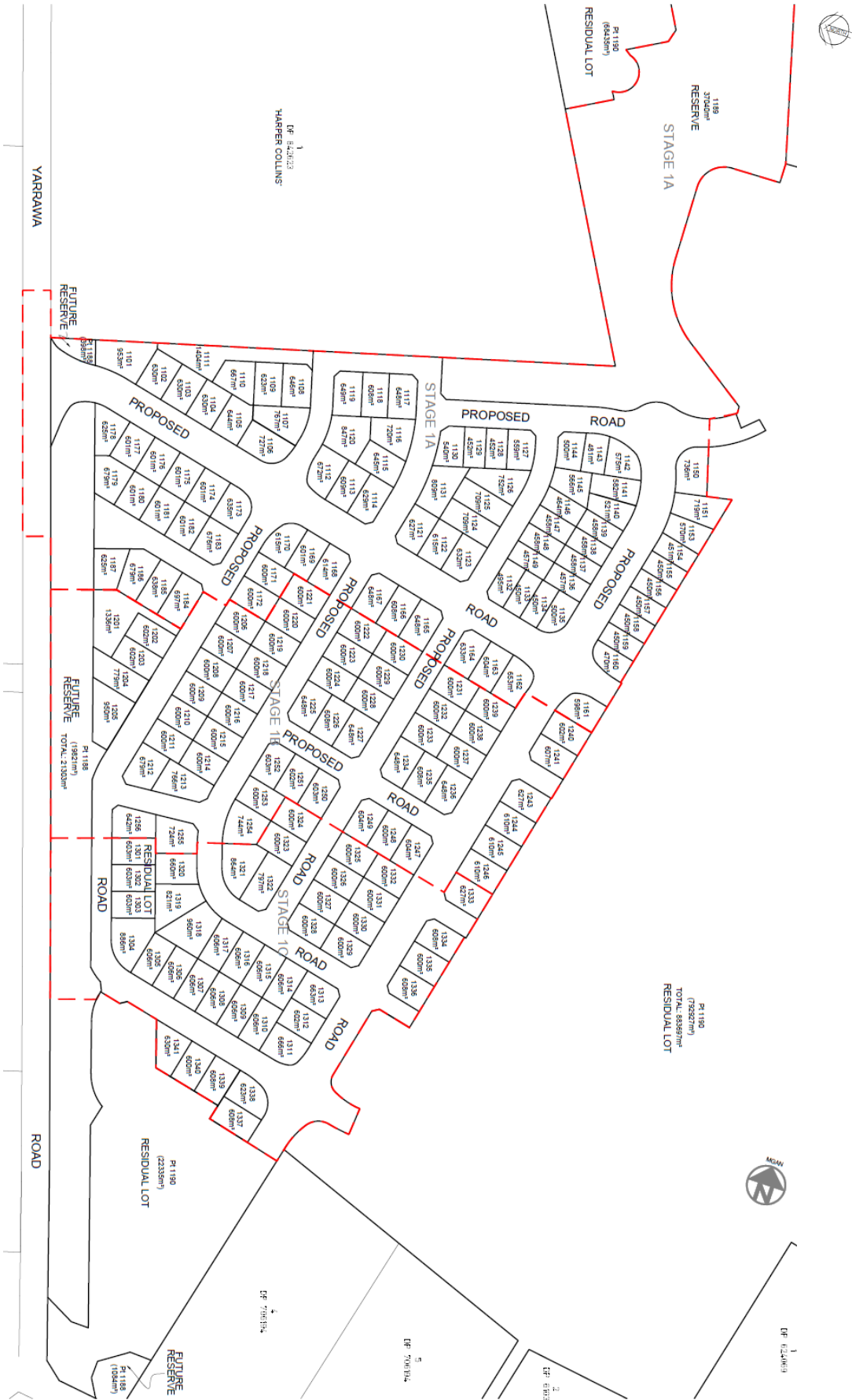
- Stage 1 comprises three sub-stages 1A, 1B and 1C to facilitate staged construction and subdivision certificate.
- Torrens Title subdivision for the creation of 182 lots for future residential use, two (2) lots for open space or drainage and three (3) Residue Lots subject to future stages of development.
- Landscaping works including a new Open Space buffer zone along Yarrawa Road frontage (to be dedicated to Council upon completion of Stage 1) and street trees.
- Construction of roads, kerbs, gutters and paths (to be dedicated to Council).
- Construction and installation of essential services and ancillary infrastructure.
- Site clearing, tree removal and bulk earthworks.
- Stormwater and drainage infrastructure, including detention basins and swales, and restoration of Whites Creek riparian corridor that traverses a portion of Stage 1 of the site.
- Road works to Yarrawa Road comprising road widening and new intersection at the entrance to Stage 1.

The Subdivision Lot Layout Plan prepared by Civil Design Solutions is appended to the SEE. Key numeric aspects of the proposed detailed Stage 1 works are provided at Table 4 and the various components of the proposed development are described in the following sections.

Table 4 – Stage 1 Lot yield

Item	Proposal	
Lot Types	Torrens Title Residential Lots	
	Open Space/Recreation	
Yield per lot size	450 - 599sqm	31
	600 - 1000sqm	151
	2,000+sqm	-
Total	182 residential lots	

Figure 4 – Stage 1 DA Lot Layout Plan



Source: Civil Design Solutions

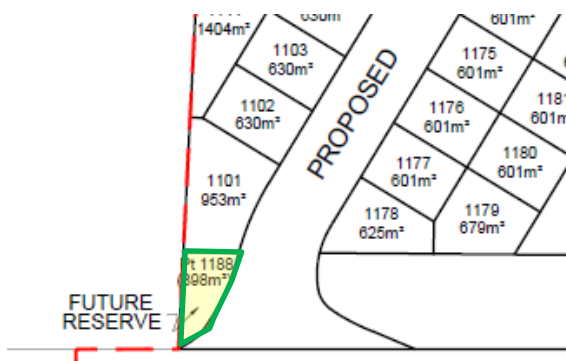
3.3.2. Yarra Road Buffer Zone

Specific to this variation request is the lot containing the Yarra Road Buffer zone to be created as part of the detailed (Stage 1) application. The proposed buffer zone is addressed below and detailed further in the Landscape Plans prepared by Arterra provided at **Appendix C** of the SEE.

The 30-metre-wide corridor of land fronting Yarra Road is zoned RE1 – Public Recreation under WLEP 2010. The buffer zone will be contained within proposed Lot 1188, which will have an overall area of 21,303sqm. However, due to the requirement for road connections with Yarra Road, two road corridor reserves are proposed at each end of the frontage as shown in **Figure 5**.

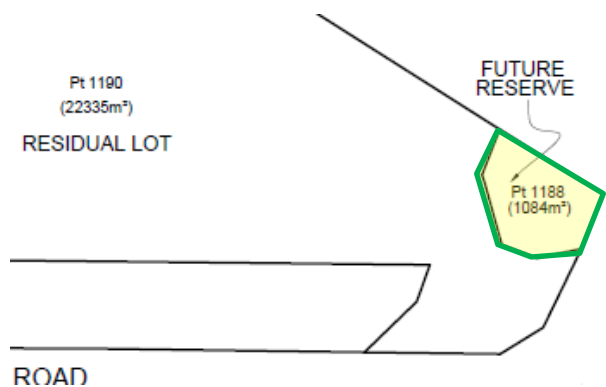
As such, Lot 1188 will consist of three (3) parts. The largest part of the lot (19,621sqm) comprises the majority of the frontage of Yarra Road. Two (2) smaller parts of Lot 1188 will be created adjacent to the proposed north and future south entrance to Yarra Road. The part lots are linked together within the subdivision plan to ensure they are contained as one lot and cannot be further subdivided.

Figure 5 – Identification of Part Lots 1188 fronting Yarra Road



Picture 4 – Northern entrance to Yarra Road

Source: Urbis



Picture 5 – Future southern entrance to Yarra Road

Source: Urbis

The buffer zone will be utilised for dual purposes. Its primary purpose is to provide windbreak planting and a visual buffer to Yarra Road. Beyond its functional role as a windbreak, it will also be used as a naturalistic linear park as pictured in **Figure 6**.

The full length of the buffer park will be delivered over time, with the northern portion of Yarra Road Buffer Park to be approved and constructed as part of Stage 1. Proposed features and elements include:

- A linear park containing native trees, shrub and ground cover planting.
- Rural fencing defining the boundary to Yarra Road associated with screen hedging.
- Feature exotic planting associated with the Entry Points.
- Shared pathway traversing part of the length of the park.
- Some minor park furniture including seating.

Figure 6 – Yarra Road Buffer Park



Source: Arterra

4. SECTION 4.15 ASSESSMENT

4.1. WINGECARRIBEE LOCAL ENVIRONMENTAL PLAN 2010

This clause 4.6 request seeks to vary the minimum subdivision lot size control within clause 4.1 of WLEP 2010 and the associated Minimum Subdivision Lot Size Map applied to the land identified as 'buffer zone' in Figure 7.

Clause 4.1 of the WLEP 2010 states:

4.1 – Minimum subdivision lot size

(1) *The objectives of this clause are as follows:*

(a) *to identify minimum lot sizes,*

(b) *to ensure that the subdivision of land to create new lots is compatible with the character of the surrounding land and does not compromise existing development or amenity.*

(2) *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*

(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.*

(4) *This clause does not apply in relation to the subdivision of any land:*

(a) *by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or*

(b) *by any kind of subdivision under the Community Land Development Act 1989.*

Figure 7 – Minimum Subdivision Lot Size Map (WLEP 2010)



Source: Urbis

Clause 4.6 of WLEP 2012 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 are listed within the LEP as:

- (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.*

The clause 4.6 provisions enable development consent to be granted for a proposal that contravenes a development standard within WLEP 2010. The consent authority is required to consider a written request from the applicant that justifies the contravention of the development standard by showing:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The consent authority must be satisfied that the written request adequately addresses the matters required to be demonstrated by clause 4.6(3) and that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone. The concurrence of the Secretary is also required to have been obtained.

4.2. NSW LAND AND ENVIRONMENT COURT CASE LAW

Planning principles and judgements issued by the Land and Environment Court (NSW LEC) provide guidance in relation to requests to vary a development standard. At the time of writing, case law relevant to the preparation of this clause 4.6 variation are as follows:

- *Wehbe v Pittwater Council [2007] NSWLEC 827*
- *Four2Five Pty Ltd v. Ashfield Council [2015] NSWCA 248 ('Four2five No 3')*
- *Winten Property Group Ltd v North Sydney Council [2001] NSWLEC 46*
- *Zhang and Anor v Council of the City of Ryde [2016] NSWLEC 1179*
- *Micaul Holdings Pty Ltd v Randwick City Council [2016] NSWLEC 7*
- *Moskovich v Waverley Council [2016] NSWLEC 1015*
- *Gejo Pty Ltd v Canterbury-Bankstown Council [2017] NSW LEP 1712*

The relevant findings of these cases have been considered in the preparation of this request.

5. PROPOSED VARIATION TO SUBDIVISION LOT SIZE

The vision for the development is to provide a high quality, master planned residential community providing a new range of housing choice, developed in harmony with the landscape and character of the Southern Highlands setting. This includes the delivery of a highly permeable and accessible layout with a variety of lot sizes focused around good quality open spaces and sympathetic to the site's natural landform.

As such, one of the key design components is the landscaped buffer zone on the site's western boundary fronting Yarrawa Road to provide a windbreak and visual buffer as described in Section 3.3. This buffer zone was proposed for rezoning to RE1 – Public Recreation in a Planning Proposal approved by JRRP (2013STH023). WLEP 2010 was subsequently amended in 2017 to apply new land use development controls to the site, including the buffer zone being rezoned RE1 – Public Recreation with a minimum lot size of 40 hectares.

Notwithstanding, the area of the site zoned RE1 for the purpose of a buffer zone is considerably less than 40 hectares and could never achieve a lot size which complies with the minimum lot size control under clause 4.1 of WLEP 2010. The area of RE1 zoned land is also slightly reduced by the provision of road corridors to provide access to Yarrawa Road. As such, the total size of proposed Lot 1188 which encompasses the RE1 land within the site has a total size of 21,303sqm (approximately 21.3 hectares). Accordingly, the proposed variation to the minimum subdivision lot size control in clause 4.1 is required under the provisions of clause 4.6 of WLEP 2010.

Figure 8 – Proposed Lot 1188 – Subject to variation of minimum subdivision lot size



Source: CDS (edited by Urbis)

6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standard relating to the minimum subdivision lot size in accordance with clause 4.6 of WLEP 2010. Detailed consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents.

Is the Planning Control a Development Standard?

The minimum subdivision lot size control prescribed under clause 4.1 is a development standard capable of being varied under clause 4.6 of WLEP 2010.

Is the Development Standard Excluded from the Operation of Clause 4.6?

Clause 4.6(6) restricts the use of clause 4.6 for a subdivision of land associated with a number of zonings if the subdivision will result in 2 or more lots of less than the minimum lot size or will result in a lot less than 90% of the minimum lot size required. However, RE1 zone land is not identified as being restricted within clause 4.6(6) and therefore the minimum lot size development standard applicable to this request may be varied as proposed.

What is the Underlying Objective or Purpose of the Standard?

The objectives of clause 4.1 are listed within the LEP as follows:

- (a) *to identify minimum lot sizes,*
- (b) *to ensure that the subdivision of land to create new lots is compatible with the character of the surrounding land and does not compromise existing development or amenity.*

The underlying objective or purpose of the development standard is to provide a built form that is compatible with the character of the surrounding land and does not compromise existing development or amenity.

Is compliance with the Development Standard unreasonable or unnecessary in the circumstances of the case?

The proposed master planned residential subdivision has been designed to be sympathetic to the existing rural and low scale residential land uses surrounding the site and the character of the landscape.

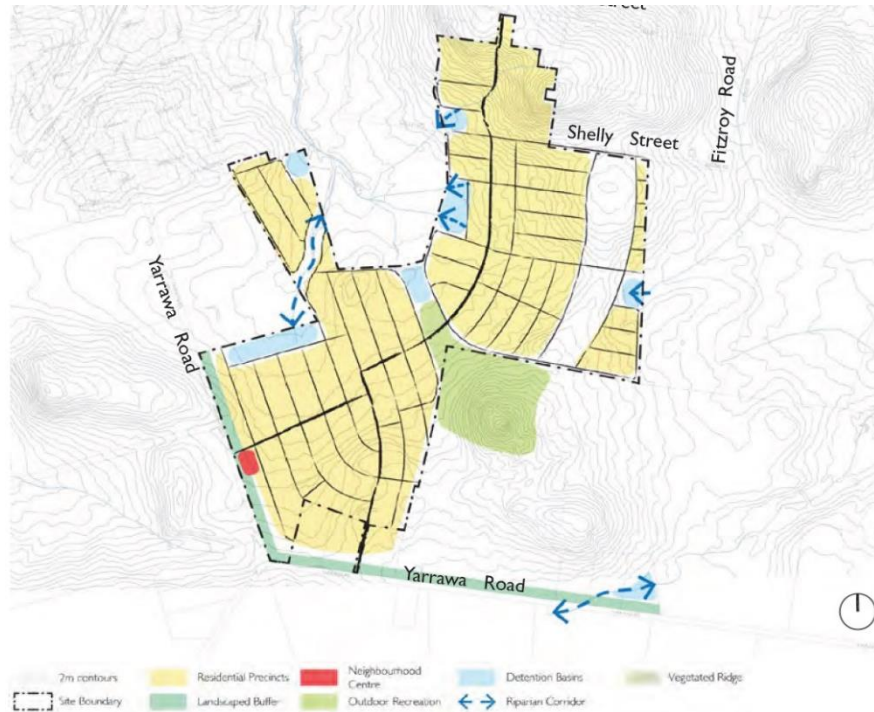
The proposed variation to the minimum subdivision lot size control is limited to the creation of Lot 1188 which incorporates the buffer zone. It has been subject to a comprehensive assessment so that it does not result in any unacceptable environmental impact.

Strict compliance with the minimum subdivision lot size development standard would be unreasonable and unnecessary having regard to the circumstances of the case and outlined as below:

- The subject RE1 zoned land with a minimum lot size control of 40 hectares under clause 4.1 is significantly smaller than 40 hectares and could never satisfy the requirements of the control.
- The 40-hectare minimum subdivision lot size is an unintended consequence of the rezoning process as outlined below:
 - The proposed use of the RE1 zoned land as a buffer zone is consistent with the intended outcome envisioned in preparation for the rezoning of the site, which was approved by JRPP in 2017. The Land Use plan (**Figure 9**) prepared for the Planning Proposal identified a landscape buffer zone fronting Yarrowa Road to *provide visual and acoustic amenity to residents as well as eliminating driveways to the main road thereby also increasing the safety of residents and motorists.* Notwithstanding, the site requires access onto Yarrowa Road and the structure plan prepared by AE Design Partnership was designed to provide this.

- However, the planning proposal did not propose a 40-hectare minimum subdivision lot size to the land reserved for the purpose of a buffer zone and was intended to have no minimum lot size control in a similar manner to other RE1 zoned land on the site. A review of assessment documentation by the JRPP and the Department of Planning for PP_2014_WINGE_003_00 cannot identify any proposed requirement for the application of a 40-hectare control to the land and it is therefore considered the current lot size control is an unintended consequence of the rezoning of the site.

Figure 9 – Original Structure Plan supporting the rezoning of the site



Source: AE Design Partnership

- The proposal achieves the objectives of the development standard as outlined below:
 - The size of Lot 1188 remains a substantially sized lot held as one parcel for the purpose of providing a landscaped open space to function as a buffer zone.
 - The landscape buffer zone within Lot 1188 will function as intended, as a visual buffer and windbreak along the full length of the Yarrawa Road frontage whilst also operating as a linear park.
 - It provides a desirable interface between rural and residential uses to ensure compatibility with the character of the surrounding land and will provide high quality amenity to the existing/future local residents.

Each of the matters listed within the ‘five-part test’ outlined in *Wehbe v Pittwater* [2007] NSWLEC 827 and *Varying development standards: A Guide* is listed and responded to as follows:

- **The objectives of the standard are achieved notwithstanding non-compliance with the standard**

The proposed development satisfactorily addresses the objectives of the minimum subdivision lot size standard as outlined below:

- The proposed master plan and detailed (Stage 1) development is compatible and consistent with the vision for the site as outlined in the rezoning of the site and the draft site specific DCP endorsed by Council in May 2019, which is for a new residential estate that is sympathetic to the natural landscape and the character of the Southern Highland setting.

The proposed master plan provides a high level of accessibility and connectivity to the local area and significant open space dedicated throughout, including a multi-purpose linear open space fronting the length of Yarrawa Road which will occupy Lot 1188.

The development is compliant with the various minimum lot size controls across the master plan, aside from the proposed variation to the minimum lot size for Lot 1188. Notwithstanding, Lot 1188

will remain as a single lot of more than 30 metres by 600 metres in continuous length to be dedicated to Council in the future (subject to agreement) and will achieve the intended objective of providing a multi-purpose open space along Yarrowa Road, which will function as public recreation space for local residents and as a vegetated buffer zone to interface between the residential lots and adjacent rural land uses.

- The proposal has been comprehensively assessed regarding its potential environmental impacts on the amenity of the adjoining rural area. The buffer zone will provide a visual buffer and act as a windbreak. The physical separation from Yarrowa Road created by the buffer will also provide some acoustic relief from road noise created by vehicles driving along Yarrowa Road.
- Further, the proposed development will provide new roundabout intersections onto Yarrowa Road to provide the main access. The first (northern) intersection onto Yarrowa Road are proposed as part of the detailed (Stage 1) works. The proposed road connections onto Yarrowa Road and associated traffic impacts from the entire master plan have been assessed. The proposed variation to the minimum lot size to facilitate these road connections will have no impacts on traffic.

- ***The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary***

The underlying objectives of the minimum subdivision lot size control have been achieved as outlined above. Proposed Lot 1188 continues to achieve the underlying objective and intent of the zone and the minimum lot size of 40 hectares. A comprehensive assessment of the potential environmental impacts has concluded that the proposal will provide a satisfactory level of amenity for the surrounding properties as outlined above.

- ***The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable***

Strict compliance with the minimum subdivision lot size is unreasonable and unachievable as the area of land zoned RE1 – Public recreation (approximately 21.3 hectares) is significantly smaller than the minimum lot size control of 40 hectares.

The master plan has been designed in consultation with Wingecarribee Shire Council and is the result of a design to support a planning proposal approved by the JRPP, and subsequently a voluntary design competition commissioned by the applicant. The proposed master plan is of high quality and provides the proposed 30 metre buffer zone along Yarrowa Road as envisioned.

The negligible reduction in lot size created by the proposed road corridors is considered acceptable as it provides necessary road access onto Yarrowa Road at two intersections, which balances traffic demand and provides alternative access for safety. An alternative development proposal that proposed to include all of the RE1 zoned land along the frontage would result in no access being provided to the site other than a narrow access handle at the southern end of the site, and/or Lovelle Street and Hill Road to the north. Both of these options were considered unsuitable due to topography or burden on the existing road network and the associated potential impact on adjoining land owners.

Overall, it is considered that strict compliance with the development standard is unreasonable as an alternate scheme which complied with the minimum subdivision lot size standard would result in an inferior outcome for the site and/or result in the site being unfeasible.

- ***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***

The minimum subdivision lot size control has been applied to existing zoned land which cannot be achieved and hence compliance with the standard cannot be achieved.

The proposed development is considered compatible and consistent with the existing and likely future development within the locality and compliance is considered unnecessary and unreasonable in the circumstances of the case.

- ***The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.***

The above consideration is not relevant to the circumstances of this case.

Are there sufficient environmental planning grounds to justify contravening the Development Standard?

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

- The proposed development will provide for a range of public benefits, including:
 - Providing a significant amount of new housing choice to the local community to support the growth of the Southern Highlands.
 - Providing a range of new active and passive open spaces throughout the master plan for the future community.
 - Revitalisation and treatment of Whites Creek, which will improve flood management downstream.
 - Provide a new local centre with community facilities (subject to approval).
 - A planning agreement between the applicant and the RMS will contribute to the upgrade of the road network in the local area.
- The proposed variation to the 40-hectare minimum subdivision lot size control for Lot 1188 containing the buffer zone is unavoidable, as the entirety of the RE1 zoned land cannot achieve this requirement. Proposed Lot 1188 will facilitate the delivery of a development that meets the objectives of the zone and the development standard, by providing a buffer zone that enhances the interface between the existing rural and future residential land uses and there are no viable alternative options.
- The proposed subdivision plan which consolidated vehicle access to two locations upholds the intent of the RE1 lands to create a buffer from Yarrawa Road and avoid private vehicle access along the frontage of Yarrawa Road, which would create pedestrian and vehicle safety concerns.
- It has been demonstrated that there will be no unacceptable environmental impacts arising from the proposed variation to the minimum subdivision lot size.

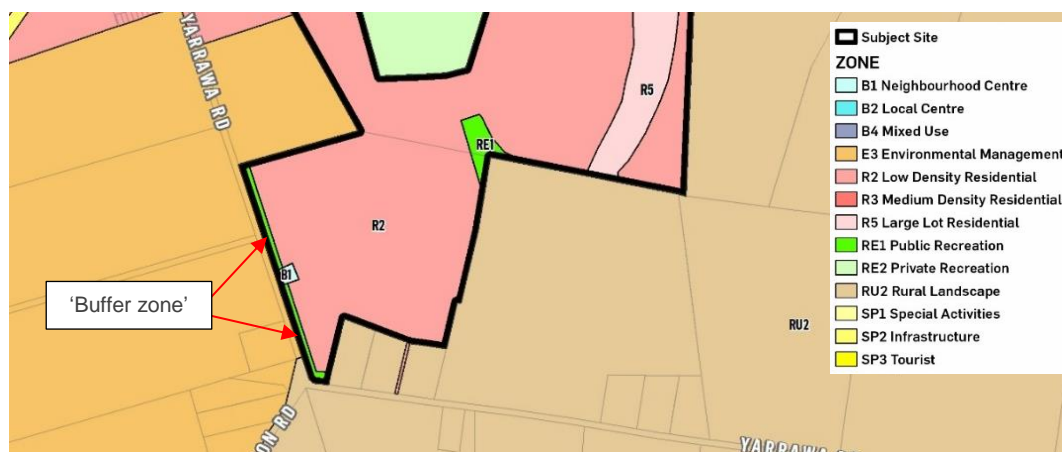
Based on the above, it is considered appropriate to relax the strict application of the development standard.

Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone in which the development is proposed to be carried out?

The proposed development satisfactorily addresses the underlying objectives of the minimum subdivision lot size development standard as outlined on page 15 of this report.

The overall site comprises R2 – Low Density Residential, R5 – Large Lot Residential, a small amount of B1 - Local Neighbourhood, and some RE1 – Public Recreation. Particular to this variation is the portion of land zoned RE1 – Public Recreation fronting Yarrawa Road. The objectives of the RE1 – Public Recreation zone in the WLEP 2010 are considered within **Table 5**.

Figure 10 – WLEP 2010 Land Use Zone Map Extract



Source: Urbis

Table 5 – Assessment of consistency with RE1 – Public Recreation objectives

Objective	Comment
<ul style="list-style-type: none"> To enable land to be used for public open space or recreational purposes. 	<p>Proposed Lot 1188 subject to this request will be used as public open space and enjoyment by the local community. The buffer zone also provides a considerable space of vegetation to act as a visual buffer and windbreak which enhances the natural environmental and will contribute to enhancing compatible land use conflict between rural and residential land uses.</p>
<ul style="list-style-type: none"> To provide a range of recreational settings and activities and compatible land uses. 	
<ul style="list-style-type: none"> To protect and enhance the natural environment for recreational purposes. 	
<ul style="list-style-type: none"> To enable ancillary development that will encourage the enjoyment of land zoned for open space. 	

Overall, the proposal will deliver an appropriate outcome of the envisioned land use activities along the frontage to Yarrowa Road, provide a desirable interface with the adjoining land use and protect the character of the area.

Would non-compliance with the development standard raise any matter of significance for State or regional environmental planning?

The proposed non-compliance with the minimum subdivision lot size development standard will not raise any matter of significance for State or regional environmental planning as the subject land is not currently capable of achieving compliance.

It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case, including:

- Providing open space landscaped buffer zone fronting Yarrowa Road.
- The 30-metre-wide buffer zone is consistent with the portion of the site reserved by the RE1 – Public Recreation zone which is unique to the site following a rezoning process.
- The proposed variation has no consequence on development yield or amenity of adjoining land uses.

Accordingly, it is considered that the approval of the proposed development would not result in an unacceptable precedent for the assessment of other development proposals.

Is there a public benefit of maintaining the development standard?

The proposed development achieves the objectives of the minimum subdivision lot size development standard and the land use zoning objective despite the numerical non-compliance (which is unachievable).

It has been demonstrated that the proposed variation will not result in an adverse environmental impact on surrounding land owners and effectively achieves the intended outcome for the site.

Overall, it is considered that the proposal will result in a high-quality outcome for the site and the surrounding land and there would be no public benefit in maintaining an unachievable development standard.

Any other matters required to be taken into consideration before granting concurrence

There are no additional matters than need to be considered within the assessment of the clause 4.6 request and prior to granting concurrence.

7. SUMMARY AND CONCLUSION

This request is made pursuant to clause 4.6 of WLEP 2010 and seeks to vary the minimum subdivision lot size development standard prescribed under clause 4.1 of the WLEP.

This report has demonstrated that strict compliance with the numerical standard in this circumstance is both unreasonable and unnecessary, and strict maintenance of the development standard is not in the public interest as:

- The proposal achieves the objectives of the development standard as provided in clause 4.1 of WLEP 2010 and is consistent with the objectives of development within the RE1 – Public Recreation zone.
- The proposal is compatible with the existing rural context and is consistent with the desired future character of the site as per the rezoning of the site in 2017, and the draft site specific DCP endorsed by Council in May 2019.
- The proposed master plan provides a desirable low scale residential area sympathetic to the landform of the site and the character of the area. The proposed landscaped master plan fronting Yarrowa Road provides an appropriate transition between the rural and residential land uses.
- An alternate scheme would still not comply with the minimum subdivision lot size development standard as the available RE1 zoned land is significantly smaller than the minimum requirement of 40 hectares.
- The proposal will result in significant social and economic benefits, including the provision of new housing choice contributing to the growth of the region.
- The proposal will deliver significant public benefits including public open space, improved pedestrian connections, community facilities and improved flood management in the area.

This report has addressed the matters pursuant to clause 4.6(3) – (5) of WLEP 2010. It is considered that the proposed variation to the minimum subdivision lot size development standard is appropriate, well founded and can be supported by Council and the Southern Regional Planning Panel under the provisions of clause 4.6.

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