

APPENDIX B

WRITTEN CLAUSE 4.6 VARIATION REQUEST




CLAUSE 4.6 VARIATION REQUEST

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PROJECT:	Development Application for the approval of a Two (2) Lot Torrens Title Residential Subdivision including a Clause 4.6 Variation Request to the Minimum Lot Size at Lot 1 DP779030 29 Orion Street, YASS pursuant to the provisions within the <i>Yass Valley Local Environmental Plan 2013 (YVLEP2013)</i> and the <i>Yass Valley Development Control Plan 2024 (YVDCP2024)</i> .
APPLICANT:	JOSH BARKER
OUR REFERENCE:	4394_4.6_V1
DATE:	SEPTEMBER 2024
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Revision Status

Rev No	Date	Report Title	Author	Reviewed by
1	03 September 2024	4.6_V1 – Proposed Two (2) Lot Torrens Title Subdivision including a Clause 4.6 Variation Request to the Minimum Lot Size – 29 Orion Street, YASS (Draft)	Rachel Doberer	Rachel Doberer
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1. INTRODUCTION

This Clause 4.6 variation request has been prepared for *Josh Barker* (the **Applicant**) by DPS YASS Pty Ltd. It is submitted in support of a Development Application (**DA**) for the subdivision of Lot 1 DP779030 29 Orion Street, YASS.

Clause 4.6 of the *Yass Valley Local Environmental Plan 2013* (YVLEP2013) provides flexibility in applying certain development standards to particular development and allows for consent to be granted to development that does not comply with a development standard in the YVLEP2013 or any other environmental planning instrument.

A development standard is defined in Clause 1.4 of the *Environmental Planning and Assessment Act 1979* as a provision of an environmental planning instrument (or a regulation) which relates to the carrying out of development and which specifies requirements or standards in respect of any aspect of that development. Minimum Lot Size is expressly identified as a development standard within Clause 1.4(1).

Development standards are a means to achieving an environmental planning objective. Clause 4.6 recognises that some developments may achieve planning objectives despite not meeting a required development standard. The planning system provides flexibility to allow these objectives to still be met by varying the development standards in exceptional circumstances.

The Department of Planning and Environment (DPE) has issued the *Guide to Varying Development Standards* (November 2023) to assist applicants in applying to vary development standards. This Clause 4.6 variation report has been prepared in accordance with the *Guide to Varying Development Standards*.

The following assessment of the proposal against Clause 4.6 of the YVLEP 2013 provides the relevant justification for the modification of a minimum lot size development standard under the Clause 4.1 – *Minimum Subdivision Lot Size* of the YVLEP 2013. The area subject of this statement is located in Yass and has a minimum lot subdivision requirement of 2000m² for the R1 General Residential zoned land.

This variation request should be read in conjunction with the Statement of Environmental Effects (**SEE**) for the subdivision of Lot 1 DP779030 29 Orion Street, YASS prepared by DPS YASS P/L dated September 2024.

The minimum lot size variation adopts existing fencing and will not have any additional impact on the surrounding area or the existing streetscape. The existing built form located on proposed Lot 1 will not be heavily impacted from a visual or privacy perspective.

Clause 4.6 of the YVLEP2013 includes provisions that allow the consent authority to vary development standards in certain circumstances. The objectives of clause 4.6 are:

- To provide an appropriate degree of flexibility in applying certain development standards to particular development.
- To achieve better outcomes for and from development by allowing flexibility in particular circumstances.



Clause 4.6 of the YVLEP2013 requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standards by demonstrating that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances.
- There are sufficient environmental planning grounds to justify contravening the development standard.

The NSW Land and Environment Court and the NSW Court of Appeal have established principles under which an assessment authority can consider a variation to a development standard against the provisions of Clause 4.6.

The key principles were established in the following Court cases:

- *Wehbe v Pittwater Council* [2007] NSW LEC 827 (**Wehbe**)
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC 1009 (**Four2Five**)
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSW LEC 118 (**Initial Action**)
- *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSW LEC 61 (**Baron Corporation**)
- *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSW CA130 (**RebelMH**)
- *Doumit v Canterbury v Bankstown Council* [2018] NSW LEC 1028 (**Doumit**)

The principles established in the above cases have been applied in justifying a departure from the Minimum Subdivision Lot Size control pursuant to Clause 4.1 of the YVLEP 2013.



2. SITE DESCRIPTION AND CONTEXT

Site context is a key consideration when determining the appropriateness and necessity of a development standard. The site subject to this variation request is located in North Yass, within the Yass Valley Council (YVC) Local Government Area (LGA). It is roughly 25km to Murrumbateman Village and approximately 60km to Canberra CBD and connects to Murrumbateman, Canberra and Goulburn seamlessly via Comur Street, Yass Valley Way, the Barton Highway and the Hume Highway. A site identification map showing the affected area within North Yass is provided in Figure 2.1 below.

The LEP controls for Yass Town were implemented in 2013 and are intended to ensure subdivision is sensitive to land and environmental characteristics of the area. The control seeks to create lots which are compatible with the desired future character of the area and protect amenity of adjoining development.

This part of Yass is surrounded by smaller lots more so along the line of those that are created in new subdivisions. Therefore, in designing the proposed minimum lot size arrangement, consideration has been given to the likely future development of surrounding sites.

The site is legally described as Lot 1 DP779030 29 Orion Street, YASS and has an overall site area of 2027m².



Figure 2.1: Site Identification Map (Source: Google Earth Aerial Imagery, September 2024)

3. PROPOSED VARIATION

3.1 DEVELOPMENT STANDARD TO BE VARIED

The development standard that is sought to be varied as part of this application is Clause 4.1 of YVLEP 2013, which establishes the minimum subdivision lot size in the R1 General Residential zone (refer **Figure 3.1**) to which the subject site relates. The subject site affected by this variation request is marked red in **Figure 2.1** above.

The relevant objectives of Clause 4.1, *Minimum Subdivision Lot Size*, are provided below.

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

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

(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 2021](#).*



3.1.1 Is the Planning Control in question a Development Standard?

The minimum lot size provisions of the YVLEP2013 are development standards for the purposes of Clause 4.6 of the YVLEP2013. They are considered to meet the definition of development standards as set out in the *Environmental Planning and Assessment Act 1979* (EP&A Act) which refers to minimum lot size requirements – see extract from the definition below.

‘Development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) *The area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point.’*

The minimum lot size prescribed under Clause 4.1 of the YVLEP 2013 is clearly and unambiguously a development standard and has continually been applied in this manner by the consent authority.

Accordingly, these provisions can be varied subject to the provisions of Clause 4.6 of the YVLEP2013.

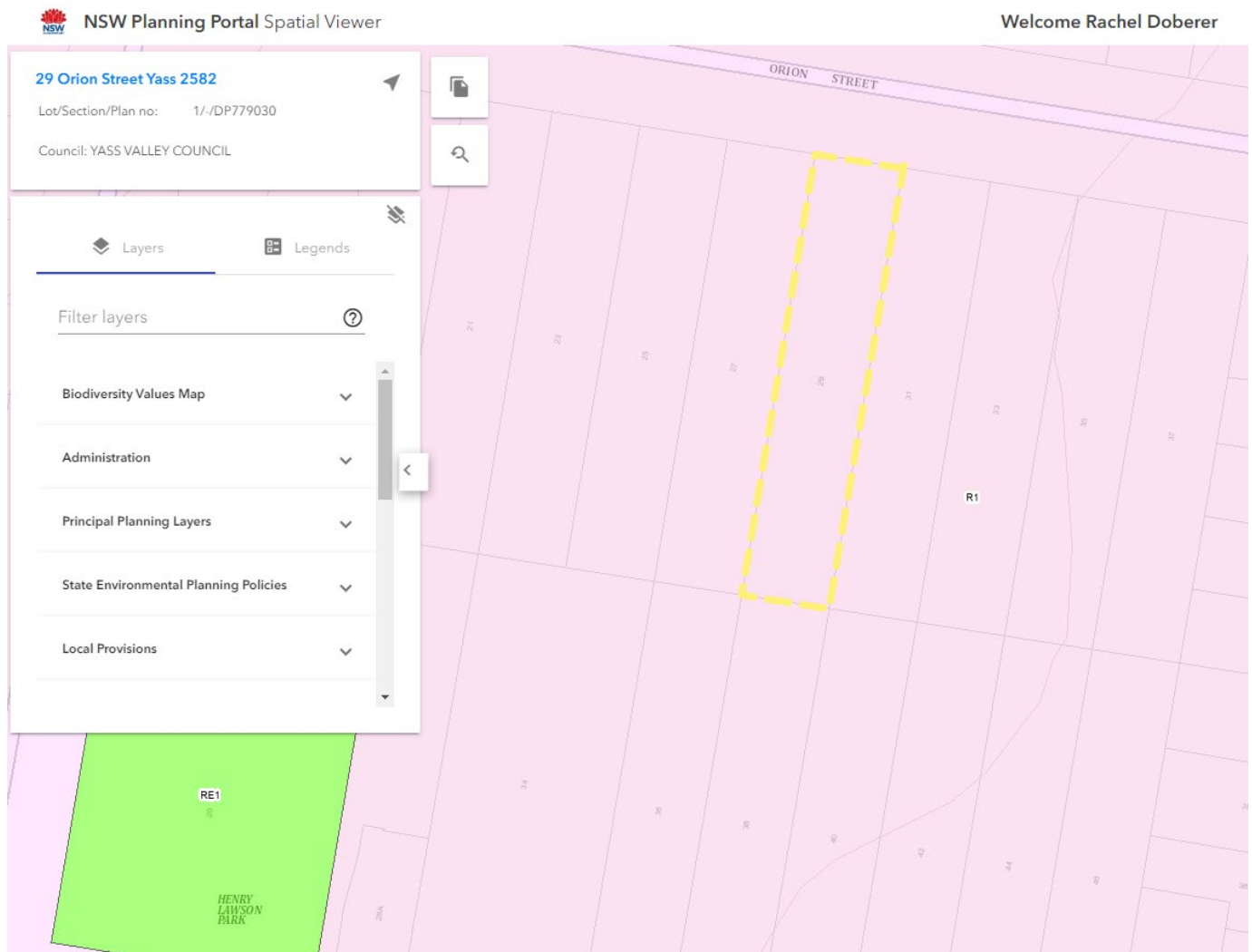


Figure 3.1: Land Zoning Map (Source: NSW Government Planning Portal Spatial Viewer, August 2024)

3.1.2 Extent of Variation

The following minimum subdivision lot size controls as set out in Clause 4.1 of the YVLEP 2013 apply to the proposed development (refer **Figure 3.2**):

LOT NUMBER	NUMERIC VALUE OF THE DEVELOPMENT STANDARD	PROPOSED NUMERIC VALUE OF DEVELOPMENT STANDARD	PERCENTAGE VARIATION BETWEEN THE PROPOSAL & THE DEVELOPMENT STANDARD
1	2000m ²	856m ²	$2000 - 856 = 1144$ $1144 / 2000 = 0.572$ $0.572 \times 100 = 57.2\%$
2	2000m ²	1192m ²	$2000 - 1192 = 808$ $808 / 2000 = 0.404$ $0.404 \times 100 = 40.4\%$

The maximum degree of variation from the prescriptive minimum lot size control pursuant to the YVLEP2013 is 40.4%.

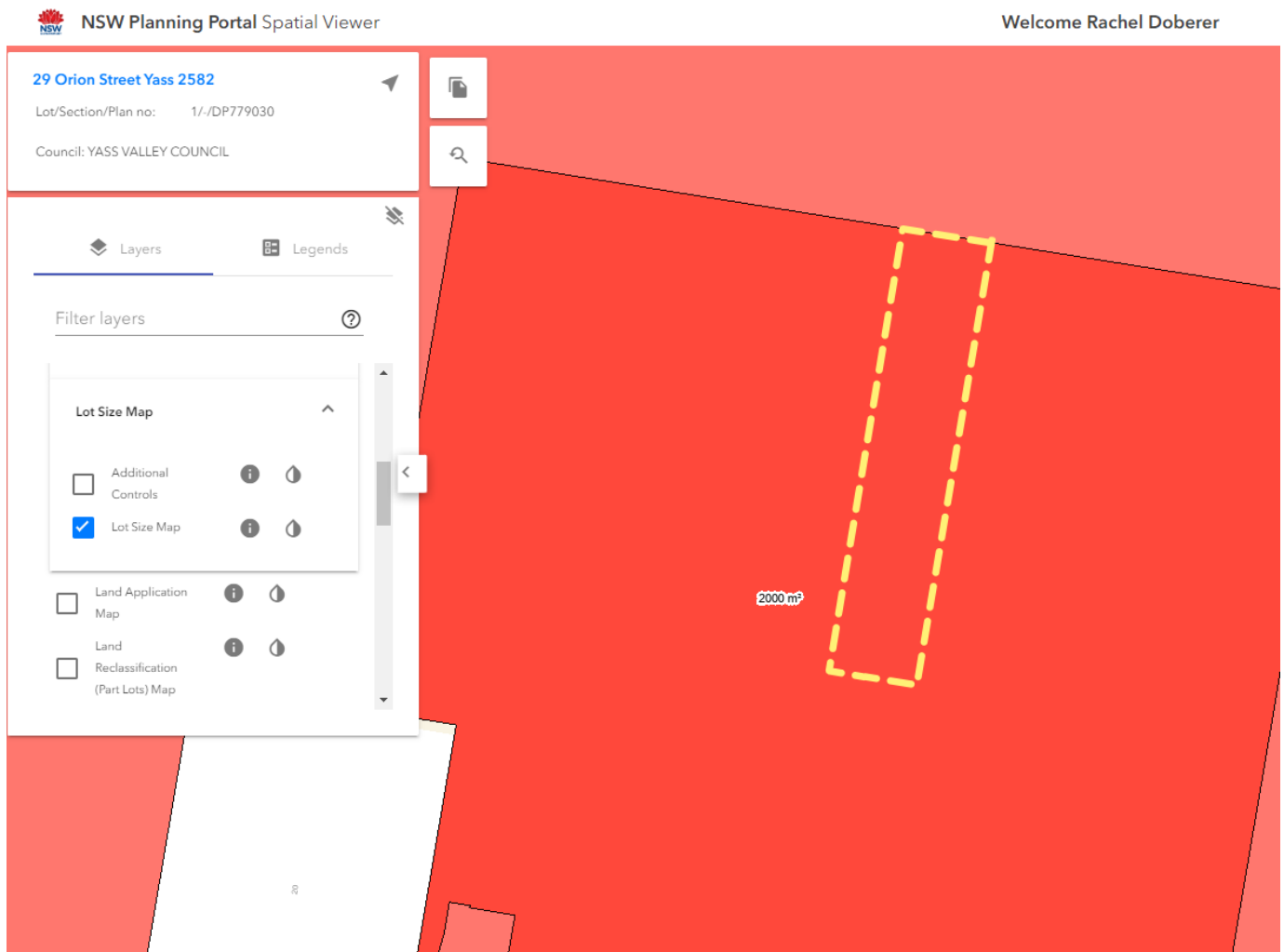


Figure 3.2: Minimum Lot Size Map (Source: NSW Government Planning Portal Spatial Viewer, August 2024)



4. CLAUSE 4.6(3)

Clause 4.6(3) of YVLEP2013 states as follows:

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.*

Note: *The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).*

The judgements in **Baron and Rebel** recognise the need for the consent authority to form its own view on whether the requirements of Clause 4.6(3) have been achieved, in order to discharge its responsibility to determine whether it is satisfied that the written variation request has adequately addressed the matters required to be demonstrated by Clause 4.6(3). Accordingly, the written Clause 4.6 variation request must demonstrate that the requirements of Clause 4.6(3) have been adequately addressed.

The non-compliance to the development standard is considered a numerical non-compliance only. The non-compliance results from the proposed development fitting well within the subject site and presents an ecologically sustainable development as intended by the Clause 4.1 objectives and controls. The proposed subdivision will not result in any impact to the immediate and surrounding visual amenity as the streetscape will remain as it is with the addition of a glimpse of a future dwelling house. It is noted however that any future built form on proposed Lot 2 would be assessed based on its own individual merit and does not form a part of this variation request. It does however influence the proposed subdivision and ultimate overall outcome.

The proposed subdivision layout is a response to the topography of the land and environmental characteristics of the site as demonstrated in the supporting documentation and plans submitted with this development application. This is extensively discussed in the Statement of Environmental Effects (**SEE**) accompanying this variation request. It is demonstrated that the proposal will not result in any adverse environmental impacts notwithstanding the departure from the minimum subdivision lot size requirement.

It is determined the proposed subdivision has been designed to avoid any impacts to significant ecological mapped areas of land. It is deemed the proposed subdivision in its current form has considered the objectives of the development standard, the subject land and the environment.

Notwithstanding, and in conjunction with the supporting documentation, the departure from the development standard satisfies the objectives of the development standard to which this request relates.

It is anticipated that this variation will have minimal impact on the surrounding landscape of the subject site. The lot layout has been determined by the location of existing/ future structures and enables the future proofing of the main residence and its ancillary structures.

The proposed development has been designed to develop a viable yield for the subject site as well as responding to the desired future character of the area. The proposed subdivision layout including the non-compliant section subject to this variation request is compatible with the existing and surrounding lot patterns. Therefore, the degree of non-compliance with the development standard does not contravene



from the existing and future character of the area and the proposal in its current form satisfies the objectives of Clause 4.1 Minimum Lot Size as outlined in Section 4.1 below.

It is deemed that the anticipation of minimal environmental impact on the surrounding landscape and the public benefit of the proposed development is considered '*sufficient environmental planning grounds*' to justify a request to vary this development standard as outlined in Section 4.2 below.

The proposed development offers an alternative means of achieving the objective strict compliance with the standard and it is deemed '*unreasonable and unnecessary*' to prevent the subdivision from obtaining consent as outlined in Section 4.2 below.

This Clause 4.6 variation request does not seek to justify a departure from Clause 4.1 minimum subdivision lot size on the basis that compliance with the YVLEP2013 is achieved. Rather, as demonstrated in this written request, compliance with the objectives of Clause 4.1 are achieved notwithstanding the non-compliance with the lot size control in question.

Having regard to all of the above, it is of the opinion that compliance with Clause 4.1 is unnecessary in the circumstances of this case as the proposed development meets the objectives of that standard as well as the zone objectives to which the subject land applies.

This section demonstrates that the relevant requirements of Clause 4.6(3) are adequately addressed.



4.1 CLAUSE 4.6(3)(A) – UNREASONABLE OR UNNECESSARY

The *Guide to Varying Development Standards* (November 2023) has been prepared by DPHI to assist applicants applying to vary development standards. It sets out that there are five common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary as established by the NSW Land and Environment Court in determining whether the objection to the development standard is well founded.

The *Guide to Varying Development Standards* also states that a Clause 4.6 application is not required to meet all of the tests.

The Court in *Wehbe v Pittwater Council* [2007] NSW LEC 827, identified five tests or methods (the 'Wehbe tests') that may be used to establish that compliance with the development standard is unreasonable or unnecessary. The five tests or methods are as follows:

1. **The objectives of the standard are achieved notwithstanding noncompliance with the standard;**
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable
5. The compliance with the development standard is unreasonable or inappropriate due to the 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.

4.1.1 First Method

The objectives of the standard are achieved notwithstanding noncompliance with the standard.

In accordance with the principle established in *Wehbe*, one of the ways to determine whether a Clause 4.6 variation request has demonstrated the achievement of the matters in Clause 4.6(3)(a) is to show that it is unreasonable or unnecessary to strictly apply the development standard as the development achieves the objectives of the development standard, notwithstanding the contravention of the development standard.

By demonstrating that the development achieves the objectives of the development standard it involves:

1. Identification of what the objectives of the development standard are; and
2. Establishing that those objectives are, in fact, achieved.

It is noted that both of the above requirements need to be addressed in a written Clause 4.6 variation request, and that the consent authority must form its own view on whether both of these matters have been adequately addressed.



The objectives of the *Minimum Subdivision Lot Size* development standard pursuant to Clause 4.1 of YVLEP 2013 and explanations of how these objectives are met notwithstanding the non-compliance with the standard are provided in Table 1 below.

TABLE 1 - OBJECTIVES OF CLAUSE 4.1 – MINIMUM SUBDIVISION LOT SIZE

OBJECTIVES OF CLAUSE 4.1 – MINIMUM SUBDIVISION LOT ISZE	COMPLIANCE
<p><i>to minimise the likely impact of subdivision on the amenity of neighbouring properties,</i></p>	<p>Complies. The proposed two (2) lot Torrens Title residential subdivision minimises any likely impact on the amenity of neighbouring properties by adopting the existing fencing and retaining the existing facade, it will not generate any unacceptable adverse environmental impacts in respect of overshadowing, view loss or privacy impacts.</p> <p>It is noted the proposed development is located within an already established area within Yass Town. The proposed subdivision layout responds to the characteristics of the site as demonstrated on the Proposed Plan of Subdivision (refer Figure 4.1).</p> <p>It is demonstrated the proposal will not:</p> <ul style="list-style-type: none"> • Impact on the amenity of neighbouring properties as there will be no change to the existing streetscape therefore maintaining the existing visually amenity, • Result in any adverse environmental impacts notwithstanding the variation from the minimum lot size requirement. <p>The proposed development has been designed to take into account the existing land uses and has been able to retain efficient and productive sized allotments, maintaining the opportunity for current and future sustainable residential development.</p> <p>The proposed two (2) lot subdivision has taken a holistic and sustainable approach to the development with the intention of creating a development that offers productive sized lots delivering a better environmental planning outcome for the town of Yass and the Yass Valley LGA as a whole.</p> <p>The proposed subdivision will not impact on either the built or natural environment in any substantial way. In this regard:</p> <ul style="list-style-type: none"> ❖ It will not result in any substantial changes to the established streetscape qualities of the area.



	<ul style="list-style-type: none"> ❖ The act of subdividing will not directly impact on neighbouring properties. The position of a future dwelling has been taken into consideration and any issues such as overshadowing, noise and privacy will not directly impact on neighbouring properties. It is determined any future new dwelling will have good separation distances to adjoining dwellings. ❖ The act of subdividing will not result in any substantial changes to traffic volumes in the locality. ❖ Subdividing the site will not necessitate the removal of any existing important vegetation. <p>By integrating the relevant economic, environmental and social considerations the proposed subdivision is actively promoting ecological sustainable development as specified earlier in this Statement.</p>															
<p><i>to ensure that lot sizes and dimensions have appropriate regard to the characteristics of the land, the rural environment, the protection of biodiversity, significant geological and natural resources, the heritage and the built form of Yass Valley,</i></p>	<p>Complies. The proposed two (2) lot Torrens Title subdivision is seeking Council consent for the creation of two lots of 1001m² and 1026m² respectively, resulting in two lots less than the prescriptive minimum lot size of 2000m².</p> <p>The detail of which is tabulated below and illustrated on the Proposed Plan of Subdivision (refer Figure 4.1).</p> <table border="1" data-bbox="667 1099 1481 1346"> <thead> <tr> <th>LOT</th> <th>LOT SIZE</th> <th>PRIMARY ROAD FRONTAGE</th> <th>ACCESS TO SERVICES</th> <th>VARIATION (%)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>856</td> <td>Orion Street</td> <td>Yes</td> <td>57.2</td> </tr> <tr> <td>2</td> <td>1192</td> <td>Orion Street</td> <td>Yes</td> <td>40.4</td> </tr> </tbody> </table> <p>The subject site is considered to be located in an area with aesthetic values associated with the established leafy landscape character and the character of a regional town. It also has limited native ecological values.</p> <p>It is anticipated that this variation will have minimal impact on the surrounding landscape of the subject site. The lot layout has been determined by the location of the existing dwelling/ ancillary structures and fencing and enables the future proofing of the existing dwelling house.</p> <p>The proposed subdivision is consistent with the aims and objectives of the YVLEP2013. The proposal will facilitate development generally in accordance the plan and will deliver allotments that can facilitate a variety of housing products to provide variety in the market and attract buyers at different price points in the market.</p>	LOT	LOT SIZE	PRIMARY ROAD FRONTAGE	ACCESS TO SERVICES	VARIATION (%)	1	856	Orion Street	Yes	57.2	2	1192	Orion Street	Yes	40.4
LOT	LOT SIZE	PRIMARY ROAD FRONTAGE	ACCESS TO SERVICES	VARIATION (%)												
1	856	Orion Street	Yes	57.2												
2	1192	Orion Street	Yes	40.4												



<p><i>to ensure that subdivision reflects and reinforces the predominant subdivision patterns of neighbouring properties and surrounds,</i></p>	<p>Complies. The proposal has been prepared to ensure that the design reflects and reinforces the neighbouring subdivision patterns, preserving the character of Yass Valley (refer Figure 4.2) that demonstrates lots of similar size to the proposed Lots.</p> <p>It is anticipated that the proposed two (2) lot Torrens Title Residential subdivision will have a positive impact on the surrounding landscape of the subject site.</p> <p>The proposed development seeks to promote good design and amenity that will allow for the orderly and economic development of the subject land.</p>
<p><i>to maintain the character of Yass Valley,</i></p>	<p>Complies. The proposal has been prepared to ensure the design reflects and reinforces the neighbouring subdivision patterns, preserving the character of Yass Valley.</p> <p>Local character is what makes a place or area distinctive or unique. Local character is the combination of multiple factors, which relate to the area's history, built form, public and private spaces, community values and how they connect to a place.</p> <p>The proposal responds to the character of Yass and is consistent with the aims and objectives of this development standard.</p> <p>The proposal has taken into consideration the location, type and intensity of development whilst also having regard to the characteristics of the land and the surrounding environment, in turn maintaining the character of Yass Valley.</p> <p>The proposed development has been prepared taking into consideration any potential socioeconomic and environmental concerns. It has been determined the development will not raise any matters of significance to inhibit the approval of the development application.</p>
<p><i>to ensure subdivision occurs in a planned and sustainable way,</i></p>	<p>Complies. The subdivision has been designed to have regard to the existing land uses and has been able to retain efficient and productive sized allotments, maintaining the opportunity for sustainable residential development.</p> <p>The subject site is within an established residential area comprising a range of lot sizes, many of similar size to proposed Lot 1. Yass Town is subject to urban renewal through redevelopment and use of vacant land to assist with the number of available housing stock.</p> <p>It is considered to be an appropriate use of the subject land in relation to the location and zoning, makes good use of the land and will have no adverse environmental effects on the</p>



	subject/ surrounding land, or any adjoining development where managed with the appropriate conditions.
<i>to ensure subdivision does not create unreasonable or uneconomic demands for the provision or extension of services,</i>	<p>Complies. The proposed two (2) lot Torrens Title subdivision will not create unreasonable or uneconomic demands for the provision of services.</p> <p>It is noted the provision of services to proposed Lot 1 is existing. Proposed Lot 2 will require the extension of Councils services as demonstrated on the Civil Engineering Design (refer Appendix C of the SEE), however it will not create an unreasonable or uneconomic demand on the existing service provisions.</p>
<i>to prevent the subdivision of land on the fringe of urban areas into small lots that may negatively influence the layout of future urban areas.</i>	Not Applicable. The subject lot is located within an existing urban area. The proposed subdivision will not negatively influence the layout of future urban areas.

This Clause 4.6 variation request does not seek to justify a departure from Clause 4.1 minimum subdivision lot size on the basis that compliance with the YVLEP 2013 is achieved.

Rather, as demonstrated in Table 1, compliance with the objectives of Clause 4.1 is achieved notwithstanding the non-compliance with the lot size control in question. This is due to the sensitive design of the proposed lot size arrangement which has regard to the future development of proposed Lot 2 and seeks to create appropriately sized lots in the current circumstances.



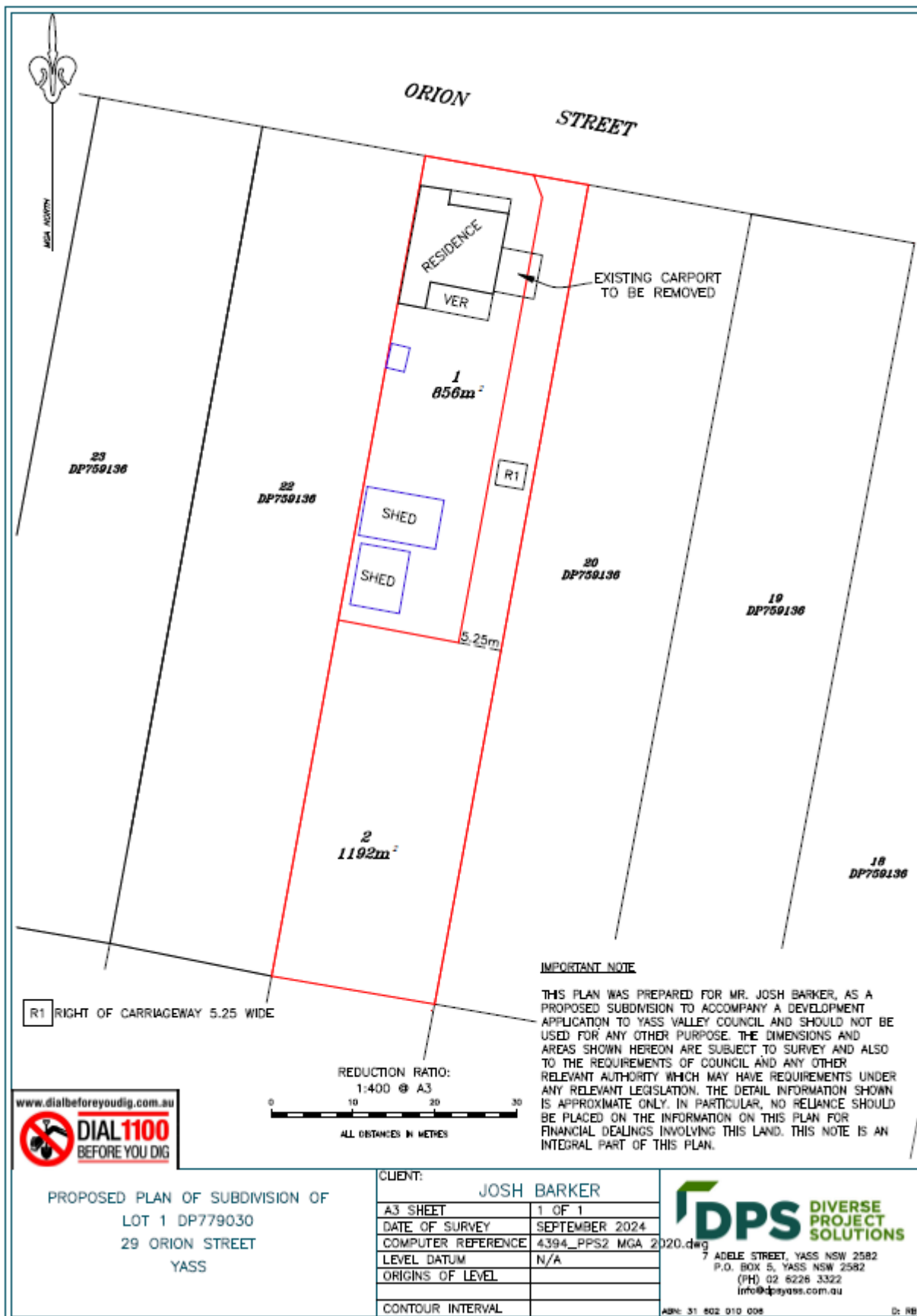


Figure 4.1: Proposed Plan of Subdivision (Source: DPS YASS P/L, September 2024)



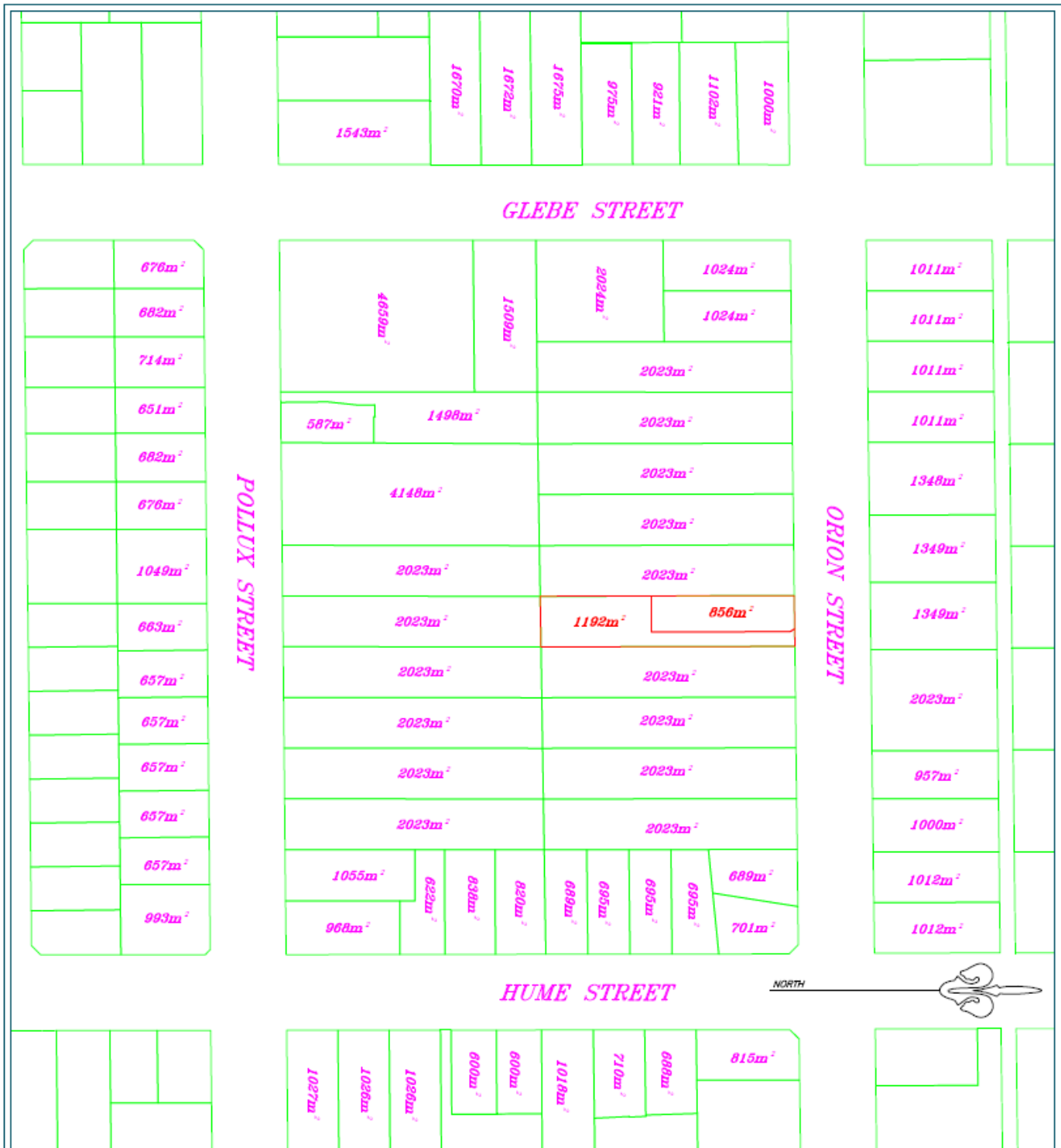


Figure 4.2: Subject Site in context with Surrounding Neighborhood Lot Sizes (Source: DPS YASS P/L, September 2024)

The above justification is considered reasonable. It is recommended that the consent authority can form the positive opinion that the applicant’s written request has satisfied clause 4.6(3)(a).



4.2 CLAUSE 4.6(3)(B) – SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

This section of the report demonstrates that there are sufficient environmental planning grounds to justify contravening the minimum subdivision lot size development standard as required by Clause 4.1 of the YVLEP2013.

The Court in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSW LEC 118 established the ‘sufficient planning grounds’ include matters that ‘relate to the subject matter, scope and purpose of the EP&A Act, including the objects in S 1.3’.

By varying the development standard, we are not contravening the outcome of the development standard, rather the development is expected to lay the foundation for more efficient utilisation of the land in the future.

This proposed layout including the non-compliant section subject to this variation request is compatible with the existing and surrounding lot patterns. Therefore, the degree of non-compliance with the development standard does not contravene from the existing and future character of the area and the proposal in its current form satisfies the objectives of *Clause 4.1 Minimum Lot Size*. Specifically, the proposed subdivision:

- Will not impact on the amenity of neighbouring properties.
- Ensures that the lot size and dimension is appropriate in regard to the characteristics of the subject land and the existing built form.
- The proposed subdivision reflects and reinforces the subdivision patterns of neighbouring properties and surrounds.
- Maintains the character of Yass Valley by retaining the existing dwelling/ cottage on the site.
- Ensures the subdivision occurs in a planned and sustainable way as the subject site is within an established residential area comprising a range of lot sizes, many of similar size to proposed Lots 1 & 2. Yass Town is subject to urban renewal through redevelopment and use of vacant land to assist with the number of available housing stock.
- Ensures there will not be an unreasonable or uneconomic demands for the provision of services. It is noted the provision of services to proposed Lot 1 is existing. The extension of services to proposed Lot 2 is achievable as per the Civil Engineering Plans prepared by Genium Civil Engineering (refer **Appendix C of the SEE**).

Nonetheless, the objectives of the standard have been achieved albeit in a different way envisioned under the YVLEP2013. The variation to lot size as detailed earlier will not result in any detriment to the public, rather the public benefits arising from the additional lot/ dwelling entitlement, potential employment opportunities that would be delivered by the development, increased supply to the housing market, the development and maintenance of underutilised land to name a few can be classed as ‘*sufficient environmental planning grounds*’ to justify contravening the development standard.

The *Guide to Varying Development Standards* sets out the following in relation to consideration of environmental planning grounds:

The term ‘environmental planning grounds’, while not defined in the EP&A Act or the Standard Instrument – Principle Local Environmental Plan, refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act. The scope of environmental planning grounds is wide as exemplified by the court decisions in this area.



Sufficient environmental planning grounds need to be established by the facts of the request. The request must justify the contravention of the development standard, not simply promote the benefits of the development. The grounds must:

- ❖ *Be sufficient to justify the contravention*
- ❖ *Focus on the aspect of the development that contravenes the development standard, not the development as a whole.*

Environmental planning grounds may not be sufficient to justify the contravention of a development standard if the variation results in unsatisfactory planning outcomes.

Avoiding adverse impacts may constitute sufficient environmental planning grounds as it promotes 'good design and amenity of the built environment – one of the objects of the EP&A Act. However, the lack of impact must be specific to the non-compliance to justify the breach.

Other examples of environmental planning grounds and specifically for this variation request include:

- *Achieving consistency with the streetscape and existing built form.*
- *Responding to topography*
- *Improving public benefit*
- *Achieving equal or better amenity outcomes (solar access, privacy, views/ outlook)*
- *Being consistent with the prevailing subdivision pattern*
- *Conserving built and cultural heritage values*

Further supporting justification for the proposed variation is listed below:

- a. The proposed subdivision will not physically change the appearance of the surrounding environment or character of the existing neighbourhood due to the existing house closest to the street being retained with the development.
- b. The proposed lot size variation will not generate any unacceptable adverse environmental impacts in respect of overshadowing, view loss or privacy impacts.
- c. The land is not steep.
- d. Each lot will have direct frontage to a public road.
- e. The proposed lots are located in a high amenity area with good access to services and public reserves.
- f. The proposal, if approved, will not result in any inconsistencies with other environmental planning instruments.
- g. The site is within an established residential area comprising a range of lot sizes. The locality is one subject to urban renewal through redevelopment and use of vacant land as well as replacement of existing housing stock.
- h. The proposed subdivision will not impact on either the built or natural environment in any substantial way. In this regard:
 - i. It will not result in any substantial changes to the established streetscape qualities of the area;
 - ii. The act of subdividing will not directly impact on neighbouring properties. The new building site has good separation distances to adjoining dwellings;



- iii. The act of subdividing the site will not result in any substantial changes to traffic volumes in the locality;
 - iv. Subdividing the site will not necessitate removal of any existing important vegetation.
- i. As stated in the *Yass Valley Settlement Strategy 2036* the Yass Valley LGA is forecasted to grow in population size quite significantly. The report noted:
- 'The majority of this future growth in the short to medium term (to 2036) will be focused in the existing settlements of Yass and Murrumbateman. It is recommended Yass strengthen its role in the region and aim to grow into a Regional Centre of 20,000 people. Murrumbateman, recognizing the primacy of Yass, would aim to grow into a major town/ large district town of 10,000 people.'*
- j. The *Draft South East and Tablelands Regional Plan 2041* records a current population for Yass of 17,442 with an expected growth to 20,684 by 2041. Further supporting comments in relation to the strategic location and growth of the area state:
- ❖ *Yass is strategically located off the Hume Highway and is a 45-minute drive from the northern suburbs of Canberra. Residents can access an established commercial core, hospital, medical and emergency services, primary and high schools, as well as a TAFE. Many people travel to the ACT for work, higher order services, health and tertiary education.*
 - ❖ *While proximity to the ACT could constrain Yass's commercial core and local service industry in the short term, the continued desire for housing and lifestyle opportunities outside the ACT could see Yass become a strategic centre in the long term. Consideration of the direction for Yass should also consider the role of Murrumbateman, and opportunities to enable residential and economic growth.*
- k. A recognised opportunity for growth and the future character of Yass specifically stated *'Sensitive urban infill and intensification especially around Comur Street and North Yass. Intensification of undeveloped or unsubdivided land zoned for residential. There are some areas that have been zoned for residential. This land has yet to fully realise its potential; and could allow a greater intensity of development.'*
- l. The proposed subdivision, located in North Yass will be providing two (2) Torrens Title residential lots similar in size to accommodate a range of different housing needs for the current and future community, boosting the supply, diversity and affordability of housing for the community and future residents.
- m. The *Yass Valley Settlement Strategy 2036* recognizes the need for greater diversity of housing types and additional dwelling houses that will be in close proximity to facilities and services in Yass and suggests:
- 'Providing well designed housing for residents who are aging or have a disability could be achieved through a mechanism such as the application of the R3 Medium Density Residential zone, with a reduction in the minimum lot size possibly to 300 sqm.'*
- The proposed development will be allowing for lots close to services especially retail and medical, will be reasonable flat with an already established footpath network and will be seen as providing an improvement of supply and diversity of housing stock for members of the public.
- n. The *Yass Valley Settlement Strategy 2036* recognises the subject parcel of land as being located in the North Yass Precinct. The character of the North Yass precinct is primarily single story, detached, residential character. Streets are a grid pattern and are generally wide, long and landscaped. Built form is generally brick veneer and weatherboard. The precinct has significant views of the Yass Dam and scenic vistas. The opportunities taken from this report for this precinct are:
- ❖ *There is no significant change to the character of this precinct.*



- ❖ *The existing character will be retained and enhanced through general renovation and redevelopment of the existing houses.*
- o. It is noted, the proposed development, whilst proposing a variation to the minimum lot size, proposes to retain/ enhance the existing character and is a redevelopment of the existing house on the subject property. It is purposefully maximising the use of the subject lot whilst acknowledging the severe housing shortage that is being felt Australia wide.
- p. There are a number of other lots on Orion Street and surrounding streets within Yass Town that are less than 2000m² (refer **Figure 4.2**). Whilst potentially created via an older LEP or other plans such as Strata or Community Title, they assist in demonstrating that this proposal will not look out of place in comparison to the surrounding lots.
- q. The proposed subdivision will not result in any impact to the immediate and surrounding visual amenity as the streetscape will remain as it is with the addition of a glimpse of a future dwelling house when Lot 2 is developed. It is noted a future built form is permitted with development consent however does not form a part of this development application or variation request, it does however influence the proposed subdivision and ultimate overall outcome.
- r. Under a separate legislative mechanism (Clause 4.1D of the YVLEP2013), the existing lots could be subdivided to an average of 400m² via a community title plan, but as there is no requirements for common or community property, it is not appropriate to utilise this clause.
- s. Sewer and stormwater disposal and infrastructure will not be impacted as they are existing for proposed Lot 1. Proposed Lot 2 provisions have been designed and demonstrated on the Civil Engineering Plan prepared by Genium Civil Engineering dated 21 March 2024 (refer **Appendix C of the SEE**).
- t. The requirements for principal open space and lot size ratios are satisfied i.e. the proposed reduced lot size would satisfy the open space and landscaping requirements.
- u. The proposed subdivision promotes orderly and economic use of the land. The proposed Lot sizes are not unreasonable nor will the subdivision look out of place. By adopting the existing fencing and structures, we are demonstrating that the proposed lot sizes are already in practice and the layout works.
- v. The proposed subdivision makes good use of a long narrow block of land that in turn promotes good design and amenity of the built environment.

The above justification has outlined the environmental planning grounds for the departure. It is recommended that the consent authority can form the positive opinion that the applicant's written request has satisfied clause 4.6(3)(b).

There are sufficient environmental planning grounds to justify a flexible approach to the application of the minimum subdivision lot size control as it applies to the site.



TABLE 2 – S1.3 OBJECTS OF THE EP&A ACT

The proposed contravention of the minimum lot size control does not result in any inconsistency with the objects of the EP&A Act as detailed in Table 2 below:

S1.3 - OBJECTS OF THE EP&A ACT 1979	COMMENT
<p>to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources</p>	<p>Consistent. The proposed development has been prepared taking into consideration any potential socioeconomic and environmental concerns. It has been determined the development will not raise any matters of significance to inhibit the approval of the development application.</p> <p>The environmental assessment of the proposed development has demonstrated that it will have minimal adverse environmental impacts. The proposal is permissible with Councils consent within the zone and meets the relevant objectives of the R1 General Residential zone and the development standard to which this request relates.</p> <p>Careful consideration has been given to the design of proposed development to ensure that a high-quality outcome is achieved whilst also achieving an environmentally sustainable development that is compatible with and sympathetic to surrounding properties.</p>
<p>to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment</p>	<p>Consistent. The proposed development has been prepared to facilitate an ecologically sustainable development that represents rational, orderly, economic and sustainable use of the land.</p> <p>The proposed lots comply with the zone objectives and are able to maintain the <i>'rural character of Yass Valley'</i> that the zone objectives seek to achieve.</p> <p>The original concept of sustainable development articulated in <i>Our Common Future</i> is of <i>'development that meets the needs of the present without compromising the ability of future generations to meet their own needs.'</i></p> <p>Consistent. In Australia the adjective 'sustainable' is qualified by the word 'ecologically' to emphasise the necessary integration of economy and environment.</p> <p>Ecologically Sustainable Development (ESD) involves a cluster of elements or principles. The following six (6) are worth highlighting:</p> <ol style="list-style-type: none"> 1. Principle of sustainable use 2. Principle of integration



3. Precautionary principle
4. Inter-generational and intergenerational equity
5. Conservation of biodiversity diversity and ecological integrity
6. Internalisation of external environmental costs

The concept of sustainability applies not merely to development but to the environment.

The Australian National Strategy for Ecologically Sustainable Development defines ESD as 'development that improves the total quality of life both now and in the future, in a way that maintains the ecological processes on which life depends.

ESD requires the effective integration of economic and environmental considerations in the decision making process.

The principle of integration ensures mutual respect and reciprocity between the economic and environmental considerations. Specifically, the following points need to be taken into consideration when assessing a development application:

- Environmental considerations are to be integrated into economic and other development plans, programs and projects, and
- Development needs to be taken into account when applying environmental objectives.

ESD mandates that the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making including in the formulation, adoption and implementation of any economic and other development plan, program or project.

Although it could be argued ESD lacks a precise accepted definition, it is generally recognised as an important concept as it ensures environmental factors and future generations are considered in assessing current development applications

The proposed development for a two (2) Lot Torrens Title Residential Subdivision can be categorized as an ESD as depicted in the accompanying Statement of Environmental Effects (**SEE**), as it is a development that meets the needs of the present generation whilst not compromising the ability of future generations to also meet their needs.



<p>to promote the orderly and economic use and development of land</p>	<p>Consistent. The proposed variation does not prevent the 'orderly and economic use and development of the land'. The proposed development will provide sustainable, efficient and productive sized allotments.</p> <p>The proposal will also retain established vegetation on the site that contributes to the character of the locality. In reality, the strict application of the numeric lot size development standard would hinder the orderly and economic use of the land.</p>
<p>to promote the delivery and maintenance of affordable housing</p>	<p>Not applicable. The proposed development is for a two (2) lot Torrens Title subdivision.</p> <p>However, whilst this DA will not be providing for 'affordable housing' as defined in the EP&A Act, it will assist with the provision of dwelling house(s) on smaller lots that in a sense will be a more affordable option than a larger parcel of land.</p>
<p>to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats</p>	<p>Consistent. As indicated on Council's LEP Terrestrial Biodiversity Map there are no areas within the subject site that have been identified/ mapped as having biodiversity concerns.</p> <p>The proposed development has taken into consideration any possible concerns and it has been determined that it will not have any detrimental effects on the biodiversity structure, function, and composition of the land.</p> <p>It is expected the proposed development will encourage the introduction of further vegetation to assist with privacy screening and to create a more appealing visual amenity.</p> <p>Further to that and during the construction phase of the proposed development, to ensure there are no adverse environmental impacts, the installation of erosion and sediment controls, and the provision of waste receptors and temporary construction exits that will be maintained in a condition that prevents tracking or flowing of sediment onto public or private property.</p> <p>It is noted there is no potential clearing of remnant trees are required to achieve the proposed subdivision, therefore demonstrating the proposed development is actively protecting and enhancing the environmental and biodiversity values of Yass Valley.</p> <p>This assessment has found that the proposal will deliver a development that enables the orderly and economic use and development of the land that complies with key controls in Council's LEP and other Government agencies, has minor and manageable environmental impacts and is compatible with the existing and desired local area character.</p>



<p>to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)</p>	<p>Consistent. The land is not identified as a heritage item in the YVLEP2013 to which this land relates. Within the LEP, a review of the heritage items reveals that adjoining allotments are not classed as items of heritage value.</p> <p>Therefore, it is considered that the proposal will not impact on any adjoining heritage items.</p> <p>According to the Office of Environment and Heritage website, there are no identified aboriginal relics or aboriginal heritage items located on the property.</p> <p>If any items are found during construction, construction works shall cease, and the Department shall be notified.</p> <p>As the development is not listed as a heritage item, no specific heritage study is required to be submitted as part of this development application.</p>
<p>to promote good design and amenity of the built environment</p>	<p>Consistent. The proposed subdivision is actively promoting good design and amenity of the built environment by retaining the existing dwelling and ancillary structure(s) on proposed Lot 1 and making the allowance for a future dwelling house on proposed Lot 2.</p> <p>It is demonstrated in all supporting information that the proposed development will result in the orderly and economic use of the land and will result in retaining the existing character and amenity of the Yass Town and the streetscape to which the subject land relates.</p>
<p>to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants</p>	<p>Not applicable. The proposed development is for the subdivision of land only, creating two (2) Torrens Title residential Lots.</p>
<p>to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State</p>	<p>Consistent. It is noted that whilst the Planning Secretary's concurrence is no longer required, enhanced reporting requirements for local councils through the NSW Planning Portal including providing reasons for decisions will enable an appropriate level of oversight, transparency and accountability.</p>
<p>to provide increased opportunity for community participation in environmental planning and assessment.</p>	<p>Consistent. The proposed development application will require neighbour/ public notification which will provide the opportunity for community input/ participation into the environmental planning and assessment of the application.</p>



5. CONSISTENCY WITH THE OBJECTIVES OF THE ZONE

TABLE 3 - OBJECTIVES OF THE R1 GENERAL RESIDENTIAL ZONE

The subject lot of this variation request is zoned R1 General Residential pursuant to YVLEP2013. A summary of the proposal's consistency with the zone objectives is provided in Table 3 below.

OBJECTIVES OF R1 GENERAL RESIDENTIAL ZONE – YVLEP2013	COMPLIANCE
<p><i>To provide for the housing needs of the community.</i></p>	<p>Consistent. The proposal is found to be consistent with the R1 General Residential land use objectives and is permitted within the zone with conditional consent. The proposed development is sympathetic with the surrounding amenity of the area, considers the opportunities and constraints of the site including all relevant legislation and is therefore considered worthy of Councils support.</p> <p>The proposed subdivision lot layout/ pattern demonstrates an appropriate residential yield for the site that will serve the needs of the current and future community.</p> <p>The proposed development provides an appropriate planning outcome for the subject land that takes into consideration the ecological impacts, aesthetic value of the land and the surrounding uses.</p> <p>It is considered the proposed development is consistent with the aims and objectives of the relevant planning instruments, is compatible with and responds positively to the site's conditions.</p> <p>The proposed vacant lot provides the opportunity for a variety of future residential accommodation that in turn provides for the housing needs of the community/ members of the public.</p> <p>The proposed development is sympathetic with the surrounding amenity of the area, considers the opportunities and constraints of the site including all relevant legislation and is therefore considered worthy of Council's support.</p> <p>The proposed development provides an adequate useable area for a future residential building with suitable living and open space on the site, as well as satisfactory car parking, setbacks and spatial separation from adjoining dwellings.</p> <p>The proposed subdivision will continue to provide for the housing needs of the community. This is exhibited in the proposed subdivision creating separately titled lots for an existing dwelling and proposed vacant residential lot.</p>



	<p>There are other similar subdivisions in the vicinity of the proposal that have excised of the existing cottage and retained the remainder of the lot to construct a future dwelling house/ family home.</p> <p>This in turn demonstrates the proposed residential subdivision is compatible with the character of Yass Town and the surrounding residential development.</p> <p>This assessment has found that the proposal will deliver a development that enables the orderly and economic use and development of the land that complies with key controls in Council's LEP, it has minor environmental impacts that are manageable and compatible with the existing and desired local area character.</p>
<p><i>To provide for a variety of housing types and densities.</i></p>	<p>Consistent. The proposed subdivision has the potential to provide for a varied type of housing and density to the existing neighbourhood and Yass Town overall.</p> <p>It is of the expectation that the proposal whilst not specifically for housing affordability, will assist in providing housing stock within the market that will assist those members of the public that are looking for a product that is more affordable.</p> <p>The proposed subdivision has been prepared to assist Council in achieving its urban management objectives by improving the supply, diversity and affordability of housing within the Yass community and in turn assists in creating a more affordable and sustainable community.</p> <p>The proposed development has taken a holistic and sustainable approach with the intention of creating a product that delivers an ecologically and socially sustainable outcome for the existing and desired local area character.</p> <p>The proposed subdivision can be categorised as an ESD as depicted earlier in this Statement as it is a development that meets the needs of the present generation whilst not compromising the ability of future generations to also meet their needs.</p>
<p><i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></p>	<p>Not applicable. The proposed developments for the subdivision of land only, creating two (2) Torrens Title residential lots.</p>

As demonstrated in Table 3, the proposal achieves the objectives of the zone. It has been demonstrated in Table 1 that the proposal achieves the objectives of the relevant development standard Clause 4.1 of the YVLEP 2013.



According to the above assessment and in accordance with the requirements of 4.6(3), it is of the opinion that compliance with Clause 4.1 is unnecessary in the circumstances of this case as the proposed development meets the objectives of that standards as well as the zone objectives to which the subject land applies.



6. CONCLUSION

This submission requests a variation, pursuant to Clause 4.6 of the YVLEP 2013, to the Minimum Subdivision Lot Size in the R1 General Residential Zone and demonstrates that:

- ❖ Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development.
- ❖ There are sufficient environmental planning grounds to justify the contravention.
- ❖ The development achieves the objectives of the development standard (Test 1 under Webhe) and is consistent with the objectives of the R1 General Residential Zone.

The consent authority can be satisfied that the proposed subdivision of Lot 1 DP779030 in its current form achieves the objectives of the development standard to which this request relates. It is consistent with the objectives of the R1 General Residential zone, notwithstanding the non-compliance with the numerically prescriptive minimum subdivision lot size requirement and it is considered that the requirements of Clause 4.6 have been satisfied to justify the variation to the development standard.

On this basis, it is appropriate to exercise the flexibility afforded by Clause 4.6 in the circumstances of this application.

