



# Minimum Lot Size

Clause 4.6 Variation

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Client: Googong Township Pty. Ltd.

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# 1 Introduction

This Clause 4.6 variation request has been prepared by Elton Consulting on behalf of Googong Township Pty. Ltd. It is submitted in support of a Development Application (DA) for the subdivision of Neighbourhoods 3, 4 and 5 (NH345) as part of the Googong Township.

Clause 4.6 of the *Queanbeyan Local Environmental Plan 2012* (QLEP 2012) enables Council to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

The following assessment of the proposal against Clause 4.6 of the QLEP 2012 provides the relevant justification for the modification of a minimum lot size (Area M) development standard under the Clause 4.1 – *Minimum Subdivision Lot Size* of QLEP 2012. The area subject of this statement is located in the south-west corner of NH345 and has a minimum lot subdivision requirement of 600m<sup>2</sup> (Area M).

This variation request should be read in conjunction with the Statement of Environmental Effects (SEE) for the subdivision of NH345 prepared by Elton Consulting, dated 17 September 2021.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)]
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)]
3. That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out [clause 4.6(4)]

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] NSWLEC 118 (Initial Action)
- » *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 (Baron Corporation)
- » *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 (RebelMH)
- » *Doumit v Canterbury – Bankstown Council* [2018] NSWLEC 1028 (Doumit)
- » *AI Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170 [2018] NSWCA 24 (AI Maha)

The principles established in the above cases have been applied in justifying a departure from the Minimum Subdivision Lot Size control under Clause 4.1 of the QLEP 2012.

## 2 Site context

Site context is a key consideration when determining the appropriateness and necessity of a development standard. The site subject of this variation request is located in the south-west corner of NH345 development area, within the Queanbeyan-Palerang Regional Council (QPRC) Local Government Area (LGA). A site identification plan showing the affected area within the NH345 in red is provided at Figure 1 below.

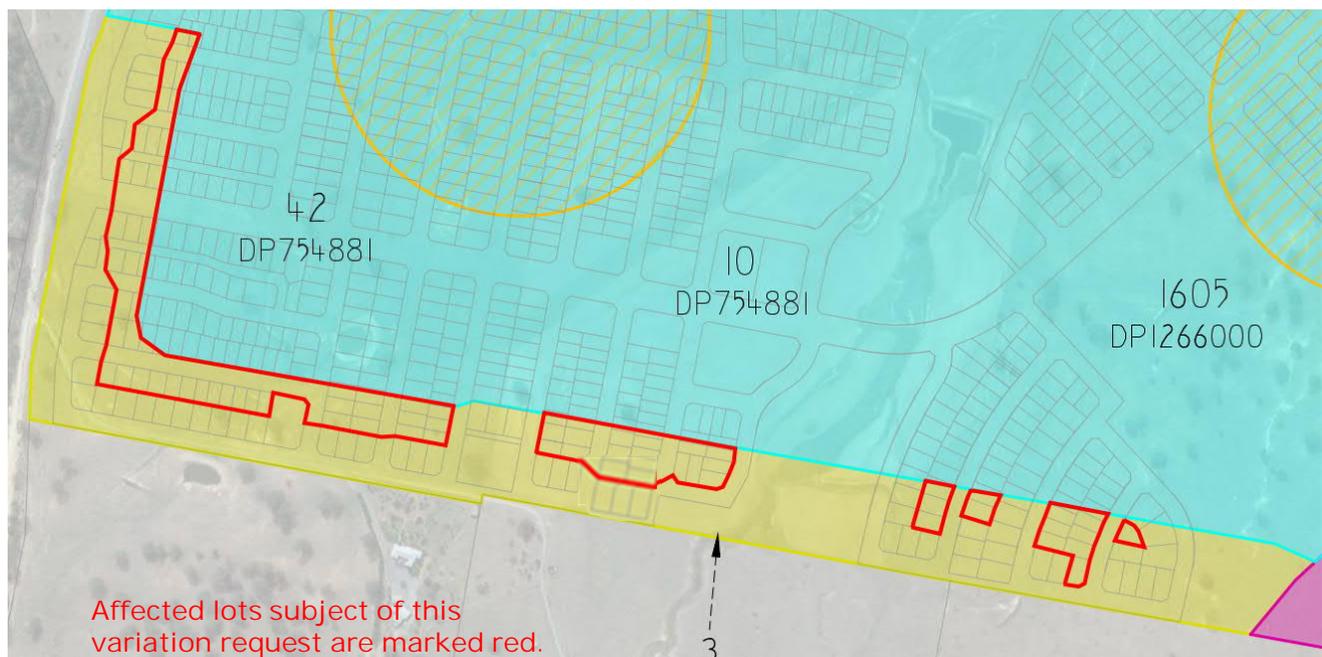
Googong Township comprises approximately 790 hectares of land currently zoned for a range of urban development purposes. It is approximately eight kilometres south of the Queanbeyan Central Business District, 15 kilometres south-east of Canberra and less than four kilometres south of Jerrabomberra. The area within which Googong is located is characterised by a variety of land-uses including nature reserves, low-intensity forestry, rural residential, cattle and sheep grazing and recreation.

The site comprising NH345 is located in the southern section of Googong Township and is currently the last section of the township to be developed. The site comprises a total area of 235 ha. NH345 is bounded by Old Cooma Road to the west, Neighbourhood 2 and Neighbourhood 1B to the north, the Googong Dam Foreshore and Pink-Tail Worm-Lizard Conservation Area to the east and rural land to the south.

Development controls have been specified to ensure lower residential density interface between the south-west corner of NH345 and the RU2 and E4 zones land on the neighbouring sites. At the same time, the QLEP 2012 permits dual occupancy development on larger lots and identifies land further south as area for Future Investigation for possible residential development. In this context, the requirement to maintain this interface between NH345 and adjacent neighbouring sites unreasonably constrains development of the site. This necessitates a unique design response that may depart from strict numerical controls whilst still achieving the objectives of the control.

The LEP controls for Googong were implemented in 2012 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. The part of Googong Township in which NH345 is located has not yet been developed in accordance with minimum subdivision lot size allowed for in the LEP controls. Therefore, in designing the proposed minimum lot size arrangement, consideration has been given to the likely future development of surrounding sites.

Figure 1 Identification of the minimum subdivision lot size zone



Source: Lonergan Surveying, 2021

## 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 QLEP 2012, which establishes the minimum subdivision lot size in the NH345 site within the Googong Township. The site subject of this variation request is zoned R1 *General Residential* under the QLEP 2012. The lots affected by this variation request are marked red on Figure 1 above.

The relevant objectives of Clause 4.1, *Minimum subdivision lot size*, are provided below.

#### 4.1 *Minimum subdivision lot size*

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

- (a) *to ensure subdivision is sensitive to land, heritage and environmental characteristics (including water quality, native flora and fauna and places or items of Aboriginal and European heritage value),*
- (b) *to ensure subdivision does not adversely impact on the functions and safety of main roads,*
- (c) *to provide lots with areas and dimensions that enable the appropriate siting and construction of a building and associated works to minimise and avoid the threat of natural hazard (including bush fire, soil instability and flooding) and to protect significant vegetation and prominent or significant landscape qualities,*
- (d) *to ensure new lots have an adequate water supply and can be provided with an effective means of disposal of domestic waste and adequately services,*
- (e) *to create lots that are compatible with the existing predominant lot pattern or desired future character of the locality and to minimise the likely adverse impact on the amenity of adjoining developments.*

(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.*

#### 3.1.1 Is the planning control in question a development standard?

Development Standard is defined under Section 4(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as follows:

*“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: ...*

*(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work...”*

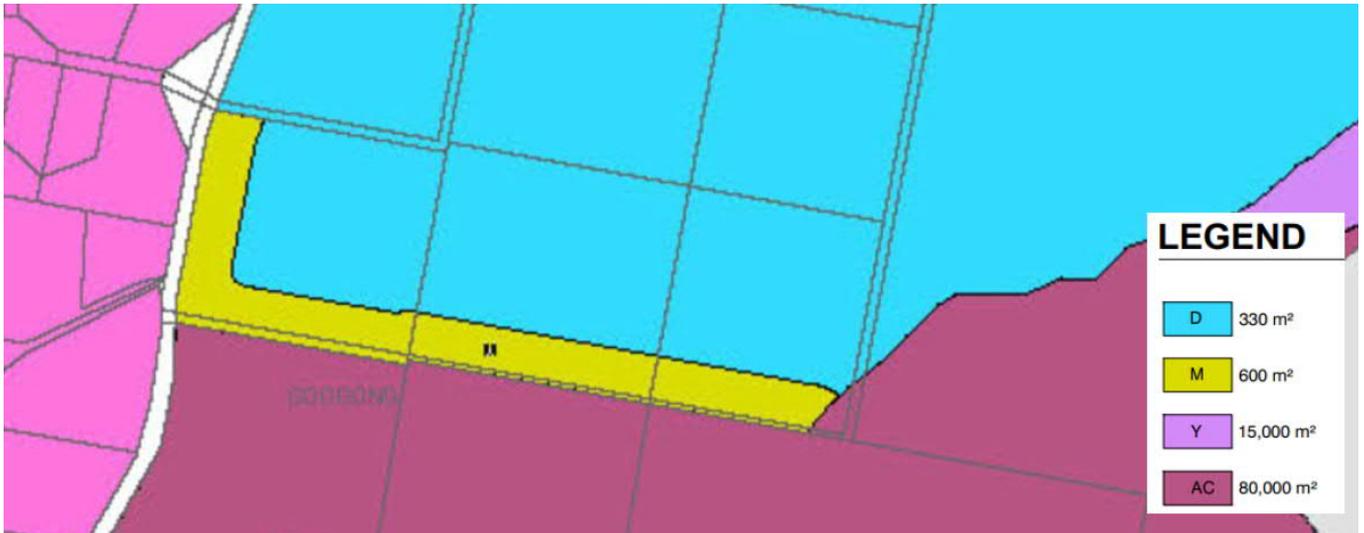
The minimum subdivision lot size prescribed under Clause 4.1 of the QLEP 2012 is clearly and unambiguously a development standard and has continually been applied in this manner by the consent authority.

### 3.1.2 Extent of the variation

The following minimum subdivision lot size controls – as set out in Clause 4.1 of the QLEP 2012 – apply to the proposed development:

- » Lot Size M – 600 m<sup>2</sup> (See QLEP 2012 Map LSZ\_007), demonstrated in Figure 2.

Figure 2 Minimum subdivision lot size controls (Map LSZ\_007)



The following non-compliance with the development control established under Clause 4.1 of QLEP 2012 results from the proposal:

- » Minimum subdivision lot size: 600 m<sup>2</sup>
  - > Extension of Lot Size D (330 m<sup>2</sup>) zone south and west to reduce the north and western portions of the area affected by Lot Size M (600 m<sup>2</sup>) development standard. A total of 81 newly created lots will be smaller than the required MLS of 600m<sup>2</sup>. These lots are marked in red on Figure 1 above.

In effect, this means that only the lots immediately adjacent to the RU2 land and Old Cooma Road would be equal to or greater than 600 m<sup>2</sup>. These lots are coloured yellow without a red outline on Figure 1 above.

The maximum degree of variation from the minimum lot size control under QLEP 2012 is 56% per an individual lot where the minimum subdivision lot size variation would occur.

## 4 Clause 4.6(3)

Clause 4.6(3) of QLEP 2012 states as follows:

*Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

*(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 judgements in Baron, Rebel and Al Maha 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'.

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

In accordance with the requirements of Clause 4.6(3)(a) of the QLEP 2012, this section demonstrates why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case.

In Wehbe, Preston CJ of the Land Environment Court provided relevant assistance by identifying six methods under which a variation to a development standard can be deemed suitable, and compliance with the standard is seen to be unreasonable or unnecessary. The six 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 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; and
6. Compliance is demonstrably unreasonable or unnecessary in some other way.

The proposed departure from the development standard is assessed using methods one and six to establish that the strict imposition of the development standard Clause 4.1, is unreasonable and unnecessary in this instance.

#### 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.

In Baron, Preston CJ noted that demonstrating that the development achieves the objectives of the development standard involves:

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

Preston CJ 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 under Clause 4.1 of QLEP 2012 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 the control

Objective	Consistency
<p>(a) <i>To ensure subdivision is sensitive to land, heritage and environmental characteristics (including water quality, native flora and fauna and places or items of Aboriginal and European heritage value),</i></p>	<p>The proposed subdivision arrangement responds to land, heritage and environmental characteristics of the site as demonstrated on the consultant reports and plans submitted with this development application and extensively discussed in the SEE accompanying this variation request. It is demonstrated that the proposal will not result in adverse environmental impacts notwithstanding the variation from the minimum subdivision lot size requirement considering the 81 lots subject of this variation request make part of the overall studies prepared for this application.</p> <p>A Biodiversity Certification Assessment report (BCAR) was prepared to accompany the NH345 subdivision DA. The BCAR states that the larger development site, NH345, was informed by previous ecological investigation accompanying the structure plan and has been designed to avoid impacts to significant ecological values. The proposed development (including the affected lots) is located in parts of the site which have been historically cleared and substantially disturbed and avoids areas of high-quality vegetation and/or which support potentially important threatened species habitats.</p> <p>An Aboriginal Cultural Heritage Archaeological Assessment and Cultural Heritage Desktop Assessment (European heritage) were prepared to accompany the NH345 subdivision DA. Both reports identified items and sites of Aboriginal and European heritage respectively. Appropriate mitigation measures were suggested, and are to be implemented, to ensure minimal adverse impact on identified items.</p> <p>Considering the land, environment and heritage characteristics of the site in its entirety have been considered in the expert reports accompanying this development application, the difference between the proposed and the required lot subdivision sizes will not affect the outcomes of these studies and the proposal in its current form satisfies this objective.</p>
<p>(b) <i>To ensure subdivision does not adversely impact on the functions and safety of main roads,</i></p>	<p>A traffic study was undertaken by SCT Consulting to analyse the traffic generated by the development. The traffic study confirms that the impacts of the proposed subdivision, notwithstanding the Clause 4.6 variation, will not be significant. The traffic study shows that the NH345 subdivision is feasible and represents an improved proposal over assumptions made in the approved structure plan.</p> <p>For the Bunyip Drive/Old Cooma Road intersection, only a give way form is required, which shows a Level of Service (LoS) A with low delays. At this level of forecast traffic, the give way intersection control is the most efficient as there are frequent gaps available in traffic.</p>

Objective	Consistency
	<p>For the Bunyip Drive/Wellsvale Drive/Gorman Drive intersection, the traffic signals with turning bays provide the best overall performance, although all options perform at LoS C or better. The format traffic signals provide the greatest long-term capacity for this intersection and for the highest level of pedestrian safety.</p> <p>All key intersections would operate satisfactorily (LoS B or better) during AM and PM peak hours.</p> <p>Considering the traffic study was prepared for the proposed subdivision application in its current format, including the lots that do not comply with the minimum lot size, the degree of non-compliance will not have any additional impacts on the traffic outcomes and satisfies this objective.</p>
<p><i>(c) To provide lots with areas and dimensions that enable the appropriate siting and construction of a building and associated works to minimise and avoid the threat of natural hazard (including bush fire, soil instability and flooding) and to protect significant vegetation and prominent or significant landscape qualities,</i></p>	<p>The proposed lot subdivision and the future construction works within the boundaries of this DA satisfy the technical requirements contained within the reports and plans accompanying this application that include proper siting and development feasibility of lots, management and protection of vegetation and significant landscape and reduction of potential natural hazards.</p> <p>The proposal does not adversely impact the significant vegetation or landscape qualities, to the degree feasible, and compensates for or manages the potential impacts on the natural environment in accordance with the conditions contained in BCAR, bushfire assessment report and the heritage assessment report to ensure residential amenity will be provided without jeopardising the environmental qualities.</p> <p>The civil infrastructure report and drawings submitted with this application provide detailed analysis showing how the potential natural risks are identified and addressed by the proposed design.</p> <p>The referenced technical reports are prepared considering the proposed lot subdivision pattern for the site that includes the 81 lots that are smaller than the minimum subdivision lot size requirement under clause 4.1 and have not identified any concerns in relation to the proposed subdivision pattern. Therefore, the proposal notwithstanding the area of non-compliance satisfies this objective.</p>
<p><i>(d) To ensure new lots have an adequate water supply and can be provided with an effective means of disposal of domestic waste and adequately services,</i></p>	<p>The proposed lot subdivision pattern is designed to ensure all the proposed lots are fully serviced by the civil infrastructure network, including sewerage, water supply, stormwater provisions that is laid out for the subdivision area. The lot subdivision pattern provides an appropriate residential yield and demand that conforms with the capacity of the civil services designed for the site.</p> <p>A Civil Infrastructure Design Report has been prepared and accompanies the NH345 DA. The report confirms that the development site can be adequately serviced notwithstanding the departure from the minimum allotment size control. Therefore, the proposal in its current form satisfies this objective.</p>
<p><i>(e) To create lots that are compatible with the existing predominant lot pattern or desired future character of the locality and to minimise the likely adverse impact on the amenity of adjoining developments.</i></p>	<p>Under provision of Section 7.14 of the Googong DCP, dual occupancy is allowed where the minimum lot size is at least 600 m<sup>2</sup>. This will provide an opportunity for these lots in the minimum subdivision lot size of 600 m<sup>2</sup> zone to be further subdivided in the future, and therefore may result in higher density in this zone contrary to the desired future character envisaged by the minimum subdivision lot size map. Furthermore, Queanbeyan's Residential and Economic Strategy 2015-1031 identified the land to the south of Neighbourhood 3 as an area for Future Investigation for possible residential development.</p> <p>The proposed development has been designed to develop a feasible yield for the site as well as responding to the desired future character of the area.</p> <p>Also, the lot subdivision pattern, including the non-compliant section subject of this variation request, is compatible with the existing predominant lot pattern in the Googong Township as established by the development of Neighbourhoods 1 and 2. Therefore, the degree of non-compliance with the development standard</p>

Objective	Consistency
	does not contravene from the existing and future character of the area and the proposal in tis current form satisfies this objective.

This Clause 4.6 variation request does not seek to justify a departure from the Clause 4.1 minimum subdivision lot size on the basis that compliance with the QLEP 2012 is achieved. Rather, as demonstrated in Table 1, compliance with the objectives of Clause 4.1 are 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 potential future development to the south and seeks to create appropriately sized lots in the current circumstances.

## 4.1.2 Sixth method

### Compliance is demonstrably unreasonable or unnecessary in some other way.

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 inappropriate to strictly apply the development standard in some other way.

The desired future character of Neighbourhood 3 is outlined further in the Googong DCP and Queanbeyan's Residential and Economic Strategy 2015-2031. These documents demonstrate the higher density potential of the site, as well as future residential development south of the zone.

Under provision of Section 7.14 of the Googong DCP, dual occupancy is allowed where the minimum lot size is at least 600 m<sup>2</sup>. This will provide an opportunity for the lots in the minimum subdivision lot size of 600 m<sup>2</sup> zone to be further subdivided in future. Therefore, these lots can accommodate a higher density residential development in this zone contrary to the desired future character envisaged by the minimum subdivision lot size map.

Furthermore, Queanbeyan's Residential and Economic Strategy 2015-2031 identified the land to the south of Neighbourhood 3 as an area for Future Investigation for possible residential development. This will result in a different future character more similar to the proposed subdivision pattern as part of this DA rather than the existing rural landscape. Therefore, the need for maintaining a transitional zone with larger land areas of 600m<sup>2</sup> along the south and west boundaries of Neighbourhood 3 will no longer be necessary.

The proposed subdivision pattern has been designed to develop a feasible yield for the site and to appropriately respond to the desired future character of the area. Considering the minimum subdivision lot size requirement under Clause 4.1 restricts the potential development for the site due to the existing character of the area and is not necessarily aligned with the future character of the area, a strict compliance with this development standard is unnecessary and unreasonable.

## 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 QLEP 2012.

In Initial Action, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole. In Four2Five Pty Ltd, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site. 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. These environmental planning grounds are demonstrated below:

## Lower residential density interfacing

The current QLEP 2012 minimum subdivision lot size map shows a 100m wide strip of land along the southern and south-western boundaries of the Googong Township and along the Old Cooma Road with a minimum subdivision lot size requirement of 600 m<sup>2</sup>. It seems this control has been put in place to ensure a lower residential density interface between the NH345 development and the RU2 and E4 zoned land to the south and south west, as prescribed by QLEP 2012 Clause 4.1(1)(c).

It is proposed to reduce the width of the 600 m<sup>2</sup> minimum lot size zone from 100m to 35m. In effect this would mean that only the lots immediately adjacent to the RU2 land and Old Cooma Road would be greater than 600 m<sup>2</sup>. The proposed structure plan for Googong NH345 proposes an edge road along the southern boundary of the township to provide a degree of separation between the RU2 zone and buffer from Old Cooma Road. Combined with the reduced depth of the 600 m<sup>2</sup> minimum lot size strip, this approach will achieve the underlying objectives of the minimum lot size map, as previously demonstrated in Section 4.1.1.

Strict compliance with Clause 4.1 would restrict the lot size pattern, thus further limiting the potential for delivering a feasible yield for the subject site without delivering a tangible positive outcome considering the rural-residential land to the south is subject to potential change in future as part of the investigation area.

## Residential density potential

Under the provisions of Section 7.14 of the Googong DCP, dual occupancy is allowed where the minimum lot size is at least 600 m<sup>2</sup>. This will provide an opportunity for these lots in the minimum subdivision lot size of 600 m<sup>2</sup> area to be further subdivided in future, and therefore deliver higher density residential yield in this area contrary to the desired future character envisaged by the minimum subdivision lot size map. Furthermore, Queanbeyan's Residential and Economic Strategy 2015-1031 identified the land to the south of Neighbourhood 3 as an area for Future Investigation for possible residential development.

The proposed development has been designed to deliver a feasible yield for the site by considering the desired future character of the area that is in accordance with objective (e) of Clause 4.1 as discussed in section 4.1.1 above. However, It should be recognised that the minimum subdivision lot size development standard under Clause 4.1 of QLEP 2012 does not consider the potential future development to the south or the changed desired future character of the area, restricting the potential yield for the site. Council has considered this issue as one of the items requiring review as part of the housekeeping LEP process currently underway.

## Place making opportunity

The slight change in the residential density as proposed by this clause 4.6 variation request, when compared to a scheme that would fully comply with the Clause 4.1 requirement, presents a unique opportunity to create a new community within the Googong Township with high level of accessibility to services and amenities within a natural environment that will be managed to ensure it maintains its high-quality values.

The proposed design results in a better planning outcome compared to a development that strictly complies with the minimum subdivision lot size control under clause 4.1 of QLEP 2012. The proposal provides a slightly higher residential yield (compared to a fully compliant scheme) without resulting in additional adverse impacts on the environment or the surrounding context as discussed in this report and the accompanying SEE.

## Other environmental planning grounds

In addition, the following matters are considered to justify departure from the development standard:

- » The lot subdivision pattern, despite the variation, results in an outcome that is compatible with the proposed development of NH345 in its entirety and zoning characteristics in the immediate context of the site and desired future character of the area.
- » The development as proposed will not result in any significant adverse impacts on the amenity or serviceability of NH345 beyond that which could be expected by a development that complies with the minimum subdivision lot size controls. In particular:

- > The proposal is consistent with the objectives of Clause 4.1 as prescribed by the QLEP 2012, and discussed in section 4.1.1 of this report;
  - > The proposal does not result in any unacceptable environmental, heritage, traffic or amenity impacts as discussed throughout this report, specially section 4.1.1, and the accompanying SEE.
  - > The proposal provides a generous separation between the residential lots and the RU2 and E4 zoned land through the provisions of an edge road along the southern boundary of the township which will provide appropriate lowered residential interface and support a high quality urban outcome along the zone boundaries.
- » The proposed development (as currently designed) achieves an appropriate residential yield for the site, thereby delivering the envisaged number of residential lots in the structural plan for the Googong Township in an accessible location. Enforcing the minimum subdivision lot size requirement under clause 4.1 of the QLEP 2012 would result in a reduction in the potential residential lots and therefore the delivery of residential dwellings in the Googong Township to meet foreseeable future needs.

### Objects of the EP&A Act

The judgment of Preston CJ in Initial Action provides guidance in determining whether there are 'sufficient environmental planning grounds' to justify a variation to development standard. These are:

- » Does the ground relate to the subject matter, satisfy scope and purpose of the EPA Act?
- » Does the ground justify contravention of the development standard?
- » Does the written request demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard?

This report demonstrates that there are sufficient environmental planning grounds to justify a contravention of the development standard. In addition, the proposed departure from the minimum subdivision lot size control will allow for the objects of the EP&A Act to be achieved, particularly objects (c) and (g):

*(c) to promote the orderly and economic use and development of land,*

*(g) to promote good design and amenity of the built environment,*

The proposal will support the orderly and economic use of land by allowing for appropriate subdivision of land in the R1 zone in the Googong Township. This will contribute to the residential amenity of Neighbourhood 3 and support economic growth.

The proposal achieves a high-quality design consistent with the desired future character for this area as discussed in this report and the SEE and justified by the technical studies accompanying this application.

## 5 Clause 4.6(4)(a)(ii)

### 5.1 Public Interest

As required by Clause 4.6(4)(a)(ii), this section demonstrates that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard, and the relevant zone objectives.

#### 5.1.1 Consistency with objectives of the development standard

As set out in Section 4.1.1 above, the proposed development is consistent with the objectives of the minimum subdivision lot size control in Clause 4.1 of QLEP 2012.

#### 5.1.2 Consistency with objectives of the zone

The lots, subject of this variation request, are zoned R1, *General Residential*, under QLEP 2012. A summary of the proposal's consistency with the zone objectives are provided below.

Table 2 Objectives of the R1 Zone – QLEP 2012

Objective	Consistency
<i>To provide for the housing needs of the community.</i>	The proposed lot subdivision pattern provides an appropriate residential yield for the site that will serve the needs of the future community.
<i>To provide a variety of housing types and densities.</i>	The lot subdivision pattern will provide for an appropriate variety of housing types and densities. By reducing the minimum subdivision lot size, housing density will slightly increase without any adverse impacts on its context.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	Satisfactory arrangements, including the provision of retail and community facilities to address the day to day needs of the future residents, are made for the Neighbourhood Centres within NH345. This Clause 4.6 variation only concerns the minimum subdivision lot sizes for the affected lots that have been considered in their current form in the assessment of need for facilities and services. Therefore, the proposal in its current form will be services sufficiently with public services and facilities.
<i>To ensure that buildings with non-residential uses have a bulk and scale that is compatible with the zone's predominantly residential character.</i>	No building works are proposed as part of this application. The bulk and scale of all development on the site will be subject of future approvals.
<i>To promote walkable neighbourhoods and a sense of community.</i>	The proposed minimum subdivision lot size arrangement has considered accessibility to services such as bus stops and other public and community spaces in short distance. The variation to the minimum subdivision lot sizes does not have adverse impacts on walkability or a sense of community as currently shown on the DA plans.
<i>To ensure that where possible, development maintains existing bushland.</i>	The proposed reduction in minimum subdivision lot size occurs on land that is zoned R1 General Residential under the QLEP 2012. As such, variation to the minimum subdivision lot size will not impact

Objective	Consistency
	on the maintenance of existing bushland that is managed as part of the overall DA for NH345.
<i>To encourage medium to high density housing located in close proximity to the town and village centres.</i>	The proposed minimum subdivision lot size arrangement does not result in high or medium density residential development.

As demonstrated in Table 2, the proposal achieves the objectives of the zone. It has also been demonstrated in Table 1 that the proposal achieves the objectives of the relevant development standard Clause 4.1 of the QLEP 2012. According to the above assessment and in accordance with the requirement of 4.6(4)(a)(ii), the proposal is therefore in the public interest.

### 5.1.3 Public Benefits

As demonstrated above, there is no significant public benefit in strictly complying with the subject development standard in terms of planning objectives. The proposed minimum subdivision lot size variation allows for orderly and economic use of the land, is consistent with the desired future character of the area and the objectives of the zone. Strict compliance with the development standard is considered contrary to public interest as it would prevent a number of public benefits from being delivered by the proposal as follows:

- » Aligning the DA for the subdivision of NH345 with the Queanbeyan’s Residential and Economic Strategy 2015-2031’s that identifies land further south of NH345 as Future Investigation for possible residential development, and
- » Allowing the creation of appropriately sized lots in the circumstances of this application that has the capacity to fully service these lots and contribute to the delivery of the expected housing targets for the area without any significant adverse impacts on its context and the environment.

## 6 Clause 4.6(8)

This section of the report demonstrates that the proposed development does not contravene controls prescribed by Clauses 6.1 and 6.2, relating to Public Infrastructure to justify contravening the minimum subdivision lot size development standard as required by Subclause 4.6(8) of the QLEP 2012.

Subclause 4.6(8) of the QLEP 2012 states: *This clause does not allow development consent to be granted for development that would contravene any of the following:*

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (ca) clause 6.1 or 6.2

Items (a), (b) and (c) above do not apply to the nature of this variation request, considering the proposed development for the subdivision of NH345 does not seek Council's approval for compliance with or variation to the above requirements.

However, considering it is required for the proposal to satisfy the arrangement made for the provision of designated state public infrastructure before the subdivision considering the subject site is in Googong Urban Release Area, an assessment of the proposal against the relevant requirements of Clauses 6.1 and 6.2 in accordance with subclause 4.6(8)(ca) of the QLEP 2012 is provided below.

### 6.1 Clauses 6.1 and 6.2

As required by subclause 4.6(8)(ca), a development application that seeks Council's approval for a variation request under clause 4.6 of the QLEP 2012 must not contravene with the requirements of clauses 6.1 and 6.2 of the QLEP 2012.

#### 6.1.1 Clause 6.1 – Arrangements for designated State and Territory public infrastructure

Control	Consistency
<i>(1) The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State and Territory public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes</i>	Noted. Refer below
<i>(2) Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before –</i> <i>(a) In relation to land shown as "Googong" on the Urban Release Area Map – 24 December 2009, or</i> <i>(b) In any other case – the land became, or became part of, an urban release area,</i>	Under clause 6.1(2) of the QLEP 2012, consent cannot be granted for this DA unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State and Territory public infrastructure in relation to the land subject of this DA.  Therefore, this DA will require, as is standard, submission to DPIE for certification that satisfactory

Control	Consistency
<i>Unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State and Territory public infrastructure in relation to that lot.</i>	arrangements are in place prior to determination of the proposed subdivision except for those lots subject to clause 6.1(3) below.
<p>(3) Subclause (2) does not apply to –</p> <p>(a) Any lot identified in the certificate as a residue lot,</p> <p>(b) Any lot to be created by a subdivision of land that was the subject of a previous development consent granted in accordance with this clause, or</p> <p>(c) Any lot that is proposed in the development application to be reserved or dedicated for public open space, public roads, public utility undertakings, educational facilities or any other public purpose, or</p> <p>(d) A subdivision for the purpose only of rectifying an encroachment on any existing lot.</p>	<p>Noted. This DA includes some proposed lots that fall within the definition of clause 6.1(3)(a) and 6.1(3)(c) where satisfactory arrangements are not required.</p> <p>Some of the proposed lots that fall within the definition of clause 6.1(3)(a) may require certification at a future stage, subject to their end use.</p>
<i>(4) This clause does not apply to land in an urban release area if all or any part of the land is in a special contributions area (as defined by section 7.1 of the Act)</i>	Not applicable.

## 6.1.2 Clause 6.2 – Public Utility Infrastructure

Control	Consistency
<i>(1) Development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required</i>	<p>Civil Infrastructure Services report and plans submitted with this application confirm that the following utility infrastructure is available and adequate arrangements have been made for them on site.</p> <ul style="list-style-type: none"> <li>- Water</li> <li>- Sewer</li> <li>- Telecommunications</li> <li>- Electricity</li> </ul>
<i>(2) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure.</i>	Not applicable.

## 7 Conclusion

This submission requests a variation, under Clause 4.6 of the QLEP 2012, to the minimum subdivision lot size in the R1 Zone standard 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 Wehbe) and is consistent with the objectives of the R1 General Residential zone;
- » The development aligns with the desired future character of the area as outlined in the Googong DCP and Queanbeyan's Residential and Economic Strategy 2015-2031; and
- » The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard.

The consent authority can be satisfied that the proposed subdivision of NH345 in its current form achieves the objectives of the development standard and is consistent with the objectives of the R1 General Residential zone notwithstanding the non-compliance with the minimum subdivision lot size and is therefore in the public interest.

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

