

City of Ryde Local Planning Panel Report

DA Number	LDA2022/0287
Site Address & Ward	7 Spencer Street, Gladesville: Lot 1 DP 877709 7A Spencer Street, Gladesville: Lot 2 DP 877709 East Ward
Zoning	R2 Low Density Residential under Ryde LEP 2014
Proposal	Proposed boundary adjustment and remove right of carriageway.
Property Owners	7 Spencer Street: Hugh J Smith & Philippa M Smith 7A Spencer Street: Jason D Dune
Applicant	Hugh J Smith
Lodgement Date	21 September 2022
No. of Submissions	None
Cost of Works	\$0.00
Report Author	Jason Chanphakeo – Assessment Officer – Town Planner
Reason for Referral to Local Planning Panel	Departure from Development Standard by more than 10% in relation to Clauses 4.1 Minimum Subdivision Lot Size & 4.1C Minimum lot size for battle-axe lots under Ryde LEP 2014.
Recommendation	Approval
Attachments	<ol style="list-style-type: none"> 1. Proposed subdivision plan 2. Applicant's clause 4.6 written request to vary clause 4.1(3) Minimum subdivision lot size and clause 4.1C(3) Minimum lot size for battle-axe lots 3. Draft conditions of consent

1. EXECUTIVE SUMMARY

The proposal is for a boundary adjustment and to remove the right of carriageway between 7 & 7A Spencer Street, Gladesville. No 7A Spencer Street is a battle-axe lot behind 7 Spencer Street. This subdivision was approved in 1993 under LDA 1993/563. The original subdivision also included a ROW adjacent to the access handle, benefiting and burdening both properties. In 2020, approval was granted to No. 7 Spencer Street for a new vehicular crossing and parking space along the north western boundary making the original ROW redundant for No 7 Spencer Street and it being used as an access handle for No 7A Spencer Street only.

The boundary adjustment and removal of ROW will see the access handle for the rear lot being 3.0m wide and to be used solely for 7A Spencer Street. The development proposes the deletion of the ROW from 7 Spencer Street and a boundary adjustment which will increase the access handle width from 2.1m to 3m. This access handle will be used solely for 7A Spencer Street.

Both lots are currently undersized and do not meet the requirements of minimum lot size under Clause 4.1(3) and minimum lots size for battle axe lot under Clause 4.1C(3) of RLEP 2014.

The proposed boundary adjustment will alter these shortfalls and a comparison is provided in the following table:

Required Minimum Lot size - Clause 4.1(3) = 580m²

Required Minimum Lot Size for Battle Axe Lot - Clause 4.1C(3) = 740m²

	Existing Lot	% Variation	Proposed Lot	% Variation
7 Spencer Street	391.6m ²	32.48%	365m ²	37%
7A Spencer Street (battle axe allotment)	227.1195m ²	69.3%	227.1195m ² (excluding access handle)	69.3%

The proposed boundary adjustment and removal of right of carriage way is intended to address safety concerns regarding car parking and vehicle manoeuvrability. The proposed adjustments to lots sizes do not satisfy the minimum lot size requirements of RLEP 2014.

The applicant has submitted a written justification seeking an exception to the above development standards under Clause 4.6 of Ryde LEP 2014. The Clause 4.6 request addresses the jurisdictional prerequisites required to satisfy the consent authority.

Assessment of the application against the relevant planning framework and consideration of matters by Council's technical departments have not identified any issues of concern that cannot be dealt with by conditions of consent.

The proposal does not result in any significant adverse impacts upon neighbouring properties or the streetscape. The subject site is suitable for the proposed development. The application is therefore considered satisfactory when evaluated against section 4.15 of the *Environmental Planning and Assessment Act 1979*.

This report recommends that the Panel support the use of Clause 4.6 to vary the development standards in this instance and approve the application subject to the recommended conditions at **Attachment 3**.

2. THE SITE & LOCALITY

The sites are legally described as Lot 1 within DP 877709 (7 Spencer Street, Gladesville) and Lot 2 within DP 877709 (7A Spencer Street, Gladesville). 7A Spencer Street is a battle-axe allotment behind 7 Spencer Street. This lot configuration was approved under LDA1993/563 on 24 January 1994.

7 Spencer Street is rectangular in shape with a frontage of 14.665 metres to Spencer Street. The north-western and south-eastern side boundaries are 26.705. The rear north-eastern boundary width is 14.665metres. The site has an area of 391.6m². 7 Spencer Street presently accommodates a single storey dwelling with vehicular access located adjacent to the north-western side boundary. Other site works include paved areas, shed, pathways and retaining walls.

7A Spencer Street is a battle axe lot with a frontage of 2.1 metres to Spencer Street. The north-western side boundary is 13.55 metres and south-eastern boundary 40.255 metres which includes an access handle of 26.70 metres. The rear north-eastern boundary width is 16.765 metres. The site has an area of 283.2m². 7A Spencer Street presently accommodates a two-storey dwelling under construction with vehicular access located adjacent to the south-eastern side boundary to a single carport/garage at the rear of the site. Other site works include paved areas, pathways and retaining walls.

Total size for both allotments is: 674.8m². An aerial photo of the sites is presented in **Figure 1**. Photos of the sites are in **Figure 2**.

The site is adjoined to the north-west by, No. 9 Spencer Street which contains a two-storey dwelling and to the south-east by No. 5A Spencer Street which is a semi-detached two storey dwelling.



Figure 1: Aerial photograph of the site (outlined in orange).



The existing dwelling (7 Spencer) on the site as viewed from Spencer Street.



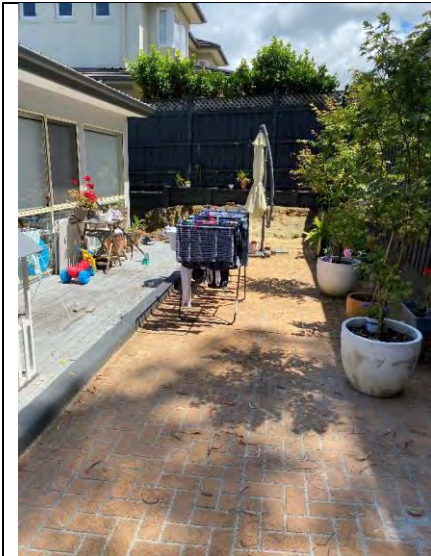
The existing dwelling and access handle as viewed from Spencer Street.



Existing rear dwelling at 7A Spencer Street taken from existing access handle



View of turing area at rear of 7 Spencer from car parking space at 7A Spencer



Existing turning area at the rear of 7 Spencer



Existing car parking structure at 7A Spencer



Existing parking space for 7 Spencer



Existing parking space for 7 Spencer

Figure 2: Photos of the subject site.

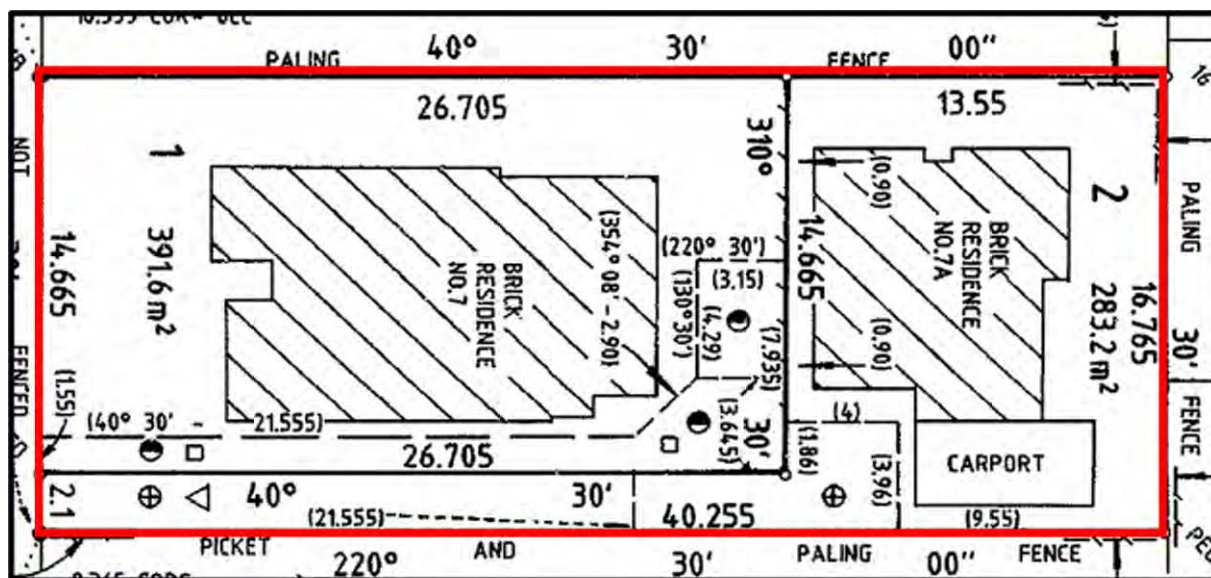
3. THE PROPOSAL

Development consent is sought for a boundary adjustment between Nos. 7 & 7A Spencer Street, Gladesville. The proposal does not include any changes to the two existing dwellings on the subject properties. The intent of the boundary adjustment is to adjust the boundary line due to safety concerns regarding car parking and vehicle manoeuvrability. As a result of the boundary adjustment, the width of the access handle will be increased from 2.1m to 3m. The proposal also seeks approval for the removal of the redundant right of carriageways for each property. The proposed plan of subdivision is shown at **Figure 4** below and **Attachment 1**.

The existing and proposed form of the lots is as follows:

Current Lot 1 (No. 7)	Proposed Lot 1 (No. 7)
Front boundary: 14.665m	Front boundary: 13.765m
SE side boundary: 26.705m	SE side boundary: 24.095 and splay of 3.26m to the rear with 7A Spencer Street
Rear boundary: 14.665m	Rear boundary: 11.815m
Lot size: 391.6m ²	Proposed lot size: 365m ²

Current Lot 2 (No. 7A)	Proposed Lot 2 (No. 7A)
Front boundary: 2.1m	Front boundary: 3m
NW side boundary: 40.255m (26.705m access handle with 7 Spencer Street & 13.55m side boundary adjacent to 9 Spencer Street)	NW side boundary: 40.255m (24.095m access handle with splay of 3.26m 7 Spencer Street & 13.55m side boundary adjacent to 9 Spencer Street)
SE side adjoining boundary: 40.255m	SE side adjoining boundary: 40.255m
Rear boundary: 16.765m	Rear boundary: 16.765m
Lot size: 283.2m ² (227.1195m ² excluding access handle)	Proposed lot size: 309.8m ² (227.1195.8m ² excluding access handle)



- ⊕ RIGHT OF CARRIAGEWAY 2.1 AND 3.96 WIDE
- RIGHT OF CARRIAGEWAY 1.55 WIDE, 7.935 WIDE & VAR. WIDTH
- EASEMENT TO DRAIN WATER 1.55 WIDE, 3.645 WIDE & VAR. WIDTH
- ▽ EASEMENT TO DRAIN WATER 2.1 WIDE

Figure 3: Extract of existing boundary lines (redlines note external boundary of No 7 & 7A Spencer St)

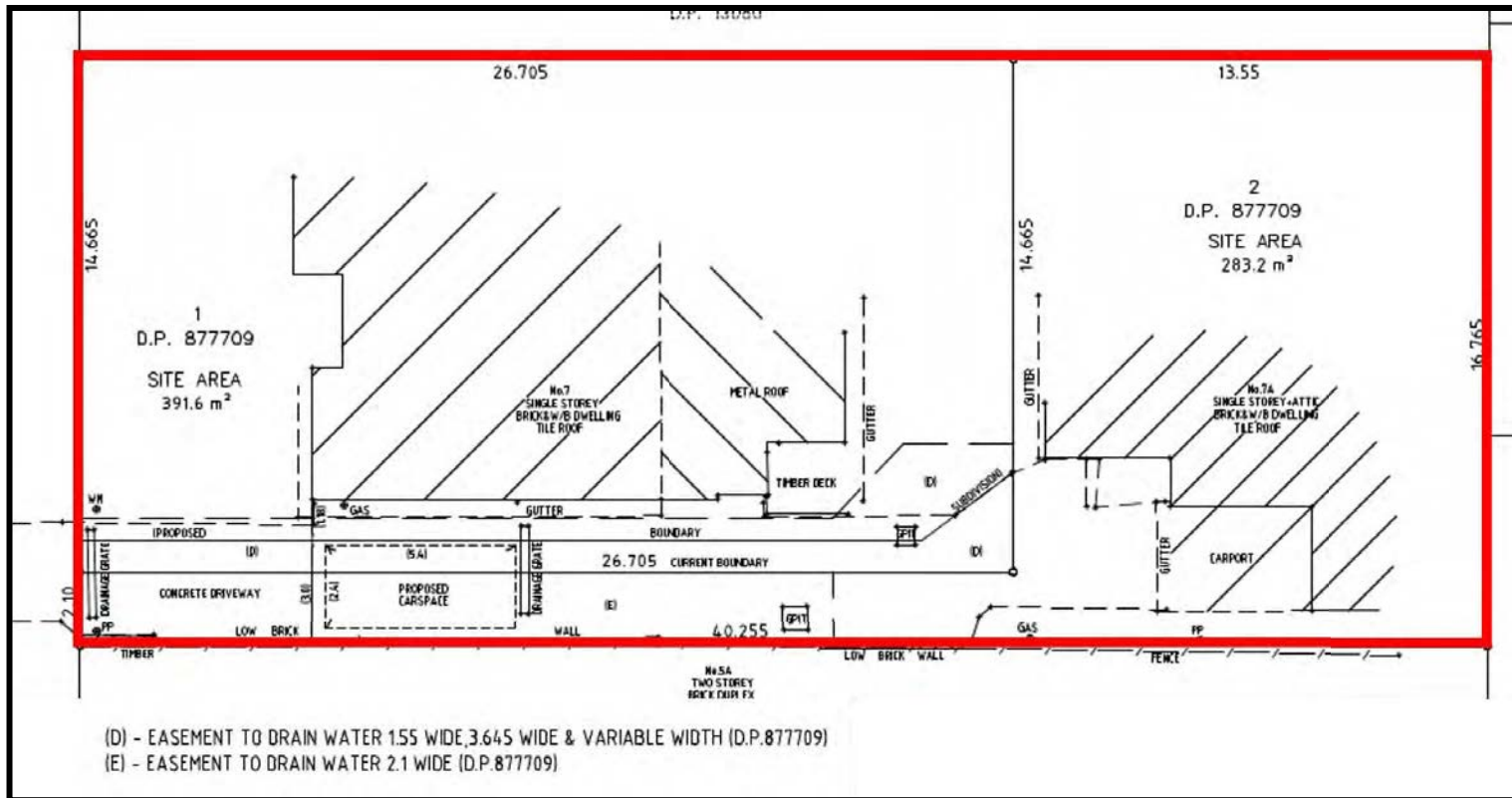


Figure 4: Extract of the Plan of Proposed Subdivision (redlines note external boundary of No 7 and 7A Spencer Street)

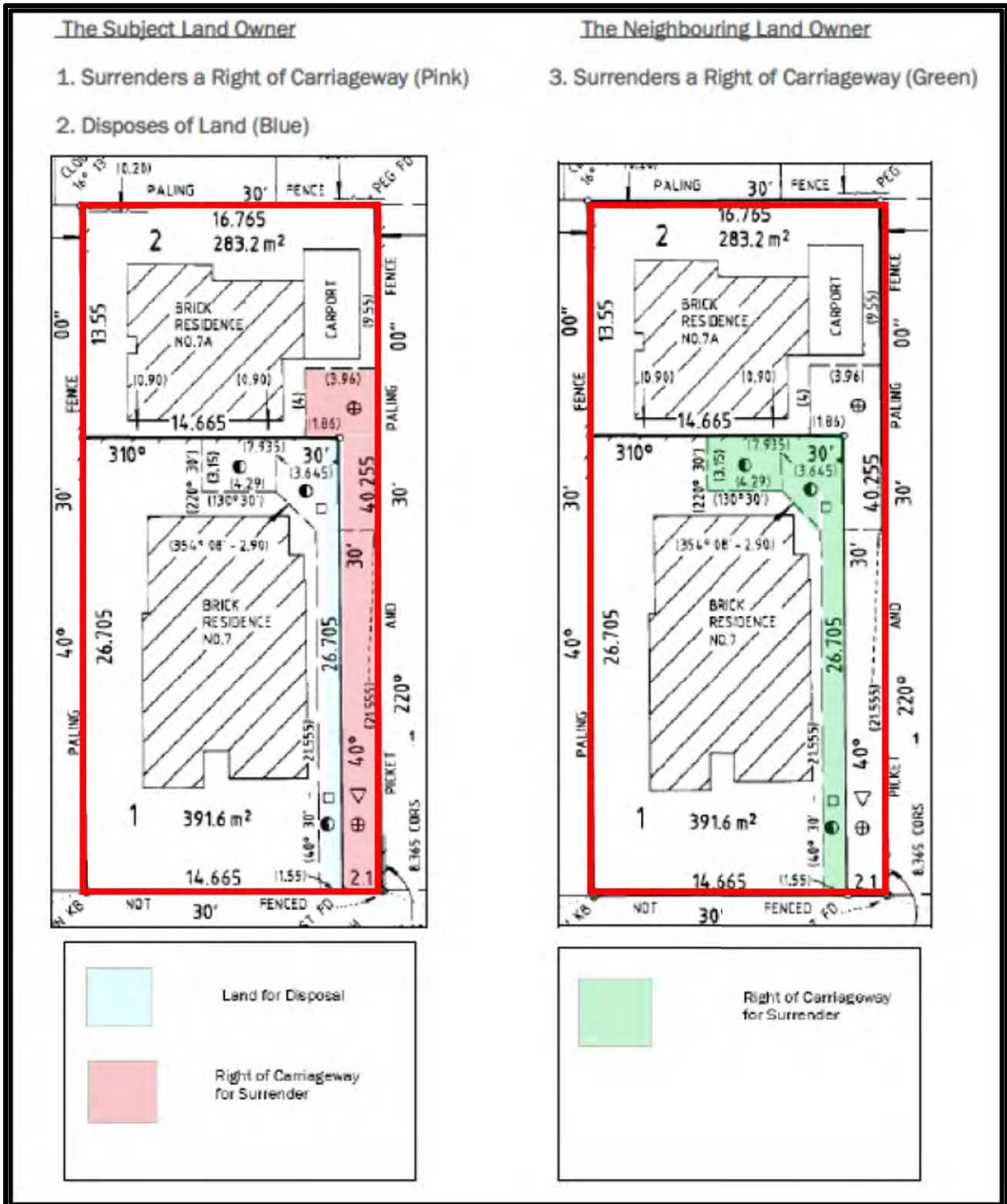


Figure 5: Proposed removal of right of carriageways (redlines note external boundary of No 7 and 7A Spencer Street)

4. APPLICATION HISTORY

21 September 2022	This DA was lodged.
26 September 2022 to 14 October 2022	The DA was notified to the owners of surrounding properties. In response, no submissions were received objecting to the development application.
25 November 2022	Council sent a request for additional information to the applicant. Clarification was sought regarding the proposed car space for 7A Spencer Street due to length of driveway access handle and its non-compliance with Council's DCP and Australian Standard.
6 December 2022	The applicant submitted amended plans and information that have adequately addressed the concerns raised.
1 February 2023	Council sent a request for additional information to the applicant seeking a Clause 4.6 variation request addressing the non-compliances with Council's lot size development standards
27 February 2023	The applicant submitted a Clause 4.6 variation request

5. PLANNING ASSESSMENT

This section provides an assessment of the DA against section 4.15(1) matters for consideration of the *Environmental Planning and Assessment Act 1979*.

5.1 State Environmental Planning Instruments

State Environmental Planning Policy Resilience and Hazards SEPP 2021 **Chapter 4 Remediation of Land**

The object of this Chapter is to provide for a State-wide planning approach to the remediation of contaminated land. The aims are to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

The subject site has historically been used for residential purposes. This application does not include any demolition, tree removal or construction works. As such, it is unlikely to raise any contamination issues and further investigation is not warranted in this case. It is considered that the site satisfies the requirements of the SEPP with regard to the proposed subdivision.

Chapter 6 Water Catchments

This Plan applies to the whole of the Ryde Local Government Area as it is within the Sydney Harbour Catchment. Division 2 of Part 6.2 of this SEPP identifies controls on development in respect of water quality and quantity, aquatic ecology, flooding, recreation and public access and total catchment management.

Given the nature of the project and the location of the site, there are no specific controls that directly apply to this proposal.

5.2 Draft Environmental Planning Instruments

Nil.

5.3 Ryde Local Environmental Plan (LEP) 2014

A detailed assessment of Ryde LEP 2014 and its relevant development standards is as follows:

Ryde Local Environmental Plan 2014	
Objectives of the R2 Low Density Residential zone	How the proposal achieves the objective
a. To provide for the housing needs of the community within a low-density residential environment.	The boundary adjustment will still permit the use of the lots for housing in order to provide for the housing needs of the community and it will maintain the low-density residential character of the locality
b. To enable other land uses that provide facilities or services to meet the day to day needs of residents	Not applicable.
c. To provide a variety of housing types	Not applicable.

Ryde LEP 2014 Clause	Proposal	Compliance
2.6 Subdivision requires consent	The proposal is seeking consent for a boundary adjustment of two Torrens title residential allotments for which Council may issue development consent under this clause.	Yes
4.1 Minimum subdivision lot size: 580m²	7 Spencer Street offers an area of 365m ² , being a shortfall of 215m ² or 37% variation.	No, Clause 4.6 variation request submitted.

<p>4.1C Minimum lot size for battle-axe lots (3) Despite clause 4.1, the minimum lot size for a battle-axe lot that is land to which this clause applies is 740m².</p>	<p>7A Spencer Street offers an area of 227.2m², being a shortfall of 512.88m² or 69.3% variation.</p>	<p>No. No change to existing area. A precautionary Clause 4.6 variation request submitted.</p>
<p>(4) If a lot is a battle-axe lot or other lot with an access handle and is land to which this clause applies, the area of the access handle is not to be included in calculating the lot size.</p>	<p>The area of the access handle (98. 5m²) has been excluded from site areas of proposed allotment (7A Spencer Street).</p>	<p>Noted.</p>
<p>4.3(2) Height of Buildings: 9.5m</p>	<p>No changes are proposed to the existing dwellings on site.</p>	<p>N/A</p>
<p>4.4(2) Floor Space Ratio: 0.5:1</p>	<p>No changes are proposed to the existing dwellings on site. No 7 Spencer Street will have a smaller lot size resulting from boundary adjustment; however, it continues to comply with the maximum FSR.</p>	<p>Yes</p>
<p>4.6 Exceptions to development standards (1) The objectives of this clause are as follows— (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p>	<p>Variations sought to:</p> <ul style="list-style-type: none"> - Clause 4.1 Minimum subdivision lot size - Clause 4.1C Minimum lot size for battle-axe lots. 	<p>Refer to discussion below.</p>
<p>6.2 Earthworks (1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.</p>	<p>No earthworks are proposed as part of this application.</p>	<p>N/A</p>

6.4 Stormwater Management (1) The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.	No changes are proposed to the existing dwellings and the existing stormwater management of the properties. Council's Development Engineer has reviewed the proposal and did not raise any concerns regarding the stormwater management of the properties.	Yes
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Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the RLEP 2014 provides flexibility in the application of development standards by allowing Council to approve a development application that does not comply with a development standard and where it can be demonstrated that flexibility in the particular circumstances achieve a better outcome for and from development.

The applicant seeks to vary the following Development Standards:

Development Standard	Minimum lot site	Proposed Lot Size	Variation
Clause 4.1 Minimum subdivision lot size	580m ²	365.0m ² (7 Spencer Street)	215m ² or 37%
Clause 4.1C (3) Minimum lot size for battle-axe lots	740m ²	227.1195m ² (7A Spencer Street)	512.88m ² or 69.3%

In regard to Clause 4.1(C)(3), the size of the battle-axe lot at 7A Spencer Street will not be amended as a result of the development given that the area of the of the battle-axe handle is excluded. Despite this, the configuration of the lot has been amended & the application has provided a precautionary Clauses 4.6 given that the overall area is still below the requirements of Clauses 4.1C(3) of RLEP2014.

Several key NSW Land and Environment Court (NSW LEC) planning principles and judgements have refined the manner in which variations to development standards are required to be approached. The key findings and directions of each of these matters are outlined in the following discussion.

The decision of Justice Preston in *Wehbe V Pittwater [2007] NSW LEC 827* established the five-part test to determine whether compliance with a development standard is unreasonable or unnecessary considering the following questions:

- *Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives?*

- *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard as unnecessary?*
- *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?*
- *Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?*
- *Is the 'zoning of particular land' unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land? Consequently, compliance with that development standard is unnecessary and unreasonable.*

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, it was found that an application under clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

- Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP; and
- That there are sufficient environmental planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity); and
- That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site is located.

This application is accompanied by a written Clause 4.6 justification seeking an exception from the minimum subdivision lot size development standard for both lots, prepared by Slattery Planning Group and provided at **Attachment 2**.

The applicant has advised that the written request has been set out in accordance with the relevant principles set out by the court.

As required by Clause 4.6(3), the consent authority shall consider this written request from the applicant which is to demonstrate:

- (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.

In demonstration that the development standard is unreasonable or unnecessary, the application's Clause 4.6 has considered whether the development is consistent with the relevant objectives of the Clause. Relevant excerpts are shown in the table below:

Ryde Local Environmental Plan 2014	
Objectives of Clause 4.1 'Minimum subdivision lot size'	How the proposal achieves the objective
a. To retain streetscape, amenity, landscaped areas, and private open space in residential zones.	<p><i>"The proposed boundary adjustment will have no material impact in terms of the streetscape, as no physical works are proposed by this DA. To this end, the proposal will retain the existing streetscape characteristics.</i></p> <p><i>The proposal will improve the amenity of Nos. 7 and 7a Spencer Street by improving the functionality of access and circulation spaces and remove the requirement for shared vehicular access.</i></p> <p><i>The proposal will not alter any existing landscaped area or private open spaces."</i></p>
b. To ensure that lot sizes enable sufficient areas of open space within each lot so as to enable the retention and embellishment of green linkage corridors in residential zones.	<p><i>"The proposal maintains the existing provision of open space within both allotments as no physical works are proposed by this DA. The proposal only seeks to realign the boundary which runs the length of the existing driveway, which will have no bearing on any areas of open space or landscaping for either allotment."</i></p>
Objectives of Clause 4.1C 'Minimum lot size for battle-axe lots'	How the proposal achieves the objective
a. To maintain visual amenity and character of the land to which this clause applies.	<p><i>"The proposal will not have any impacts on existing visual amenity or character as no physical works are proposed and the realignment of the boundary and removal of the existing right of carriageway will not have any visual impact. Furthermore, the proposal will not alter the existing character of the land which will remain as two (2) Torrens title allotments, each containing a detached dwelling house."</i></p>
b. To retain the residential amenity of that land by providing suitable landscaped areas and vehicular access.	<p><i>"The proposal maintains all existing landscaped areas on both Nos. 7 and 7a Spencer Street. The proposal will result in the existing driveway being part of No. 7a Spencer Street only, with parking accommodated within the existing carport and on</i></p>

the driveway area. Parking for No. 7 Spencer Street will be provided in the existing off-street car parking area (see below). To this end, the proposal will generally maintain the status quo in terms of parking and access.”

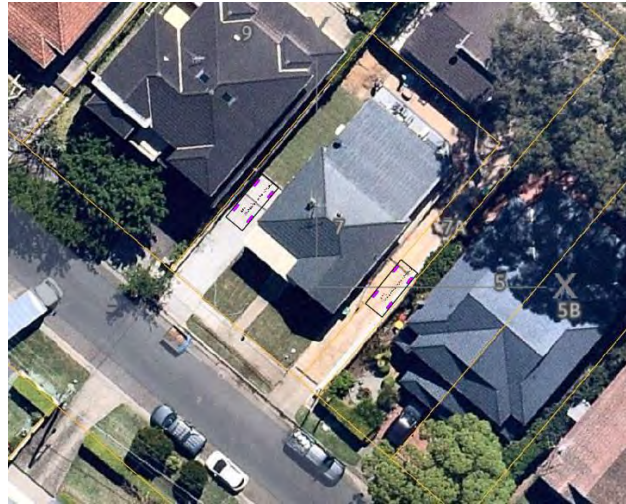


Figure 6: Aerial view of Nos. 7 and 7a Spencer Street showing access and parking arrangements (Source: Hugh Smith – Page 8 of Clause 4.6 Variation Request)

Would the underlying object or purpose of the standard be defeated or thwarted if compliance was required, such that compliance is unreasonable or unnecessary?

It is not considered that the underlying objective of the Standards is irrelevant to the proposal, however, it is submitted that the proposal is able to achieve consistency with the intent of the Standards, despite the non-compliances.

Has the development standard 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?

It is not considered that the Standards have been virtually abandoned or destroyed by Council's actions, however it is noted that the Torrens title allotments were approved by Council with areas that don't meet the minimum area requirements, and a similar subdivision exists at No. 17 Spencer Street. Furthermore, and having regard to the particulars of this Application, the proposal's consistency with the objectives of Clauses 4.1 and 4.1C of RLEP 2014 and the lack of physical, amenity of environmental impacts, it is considered that flexibility in the application of the Standards is warranted.

Assessing Officer's comments:

It is acknowledged that the existing Torrens title lots were approved by Council in 1993, predating the current minimum lot size standards as required by RLEP 2014. Despite the subdivision lot size variation, the proposed boundary adjustment will continue to offer safe movement of vehicles to and from the subject allotments, maintain same dwelling footprints and external open spaces. Therefore, the proposed boundary readjustment will not detract from the residential character of the street and broader area.

It is noted that 17 & 17A Spencer Street located to the north-west of the site also offer similar battle-axe lot subdivision. No. 17 has an area of 309.9 m² which has a shortfall of 270.1m² or 46.57% according to clause 4.1(3) Minimum lot size under Ryde LEP 2014. No 17A has an area of 277.79605 (minus the access handle) which has a short fall of 462.20395m² or 62.46% according to Clause 4.1C(3) Minimum lot size for battle-axe lots under Ryde LEP 2014.

Similar to this example of No. 17 & 17A Spencer, it is agreed that permitting the variation will not detract from the residential character of the street and broader area, as similar subdivision pattern have been approved in the past and approval of this application will not bring any noticeable physical changes to the lots or associated dwellings.

The applicant's request provides reasons why there are sufficient environmental planning grounds to justify contravening the development standards, with selected excerpts shown below:

- *the proposed boundary adjustment and removal of the existing right of carriageway results in the failure to comply with the development standards (noting that the proposal does not alter the existing non-compliance with Clause 4.1C(3) of RLEP 2014). It is noted that the existing allotments already fail to meet the development standards*
- *In this instance, it is considered that the contravention of the development standards is acceptable as the proposal will improve the functionality and amenity of both properties through the boundary adjustment and removal of the existing right of carriageway. There will no longer be any requirement for shared vehicular access and parking to the benefit of the occupants of each lot. Furthermore, these amenity and functionality gains are achieved without any physical works or changes to the appearance of the properties when viewed from adjoining properties or the public domain. Finally, the proposal maintains the existing provision of landscaping and open space within each property.*

Assessing Officer's comments:

The proposed boundary adjustment and removal of the right of carriageway results in variation to minimum lot size requirements. The proposal does not result in creation of new lots with dwelling entitlements nor change the existing dwellings on each lot. As such the variation is primarily a technical noncompliance which will not result in any additional impacts on the amenity of respective lots or the streetscape. The applicant's written request has been carefully reviewed and is considered to satisfy the matters required by Clause 4.6(3). Despite failing to provide the minimum required lot size, the proposed boundary readjustment ensures the safe vehicular movement within the site and improved amenity for the existing dwellings.

Is the proposal in the public interest?

A development is generally seen to be in the public interest if it is consistent with the objectives of the development standard and the zone in which the particular development is conducted. As already demonstrated, the development is consistent with the objective of the development standards. A response to each of the zone objectives is as follows:

Ryde Local Environmental Plan 2014	
Objectives of the R2 Low Density Residential zone	How the proposal achieves the objective
a. To provide for the housing needs of the community within a low-density residential environment.	<i>"The proposal maintains the existing provision of two (2) detached dwellings within a low-density residential environment and the maintenance of modest lot sizes adds a degree of affordability to the properties; "</i>
b. To enable other land uses that provide facilities or services to meet the day to day needs of residents	<i>"Not applicable. "</i>
c. To provide a variety of housing types	<i>"The proposal maintains two (2) detached dwellings on existing Torrens title allotments, which maintains a contribution to the variety of housing types in the locality."</i>

Therefore, the proposal is in the public interest because the development is consistent with the objectives of these particular development standards.

Clause 4.6(5) Considerations in deciding whether to grant concurrence

The proposed contravention of the development standard will not raise any matters of significance for state or regional planning matters.

There are no foreseeable public benefits in maintaining strict compliance with the development standard in this instance. The proposal offers improved outcomes for and from development by allowing flexibility in this particular circumstance

On this basis, Concurrence of the Planning Secretary can be assumed by the Panel in accordance with Clause 4.6(4)(b) and 4.6(5).

Based on the above assessment, the Clause 4.6 variation request is considered reasonable and well founded. It is recommended for support to allow flexibility in the application of the development standards.

5.4 Ryde Development Control Plan (DCP) 2014

The proposal is consistent with the objectives and controls of Ryde DCP 2014, with the exception of the following:

Part 3.3: Dwelling Houses and Dual Occupancy (Attached)		
Section 2.4 Subdivision		
DCP Control	Proposal	Compliance
a. i. Where subdivision of land is proposed, each lot (other than a hatchet shaped lot) must have an area of not less than 580m ² .	Lot 1 has an area of 365m ² .	No, variation of 215m ² or 37%.
b. i. Each hatchet shaped lot must have an area of not less than 740m ² (not including the access corridor and any part of the lot that is intended for access to other lots).	Lot 2 has an area of 227.1195m ² .	No, variation of 512.88m ² or 69.3%.

The variation to the minimum required site area for each lot has been assessed in the above Clause 4.6 variation to Clauses 4.1 and 4.1C and is recommended for support.

Part 3.3: Dwelling Houses and Dual Occupancy (Attached)		
Section 2.11.1 Car Parking		
DCP Control	Proposal	Compliance
k. Driveways for battle-axe allotments must be designed so that vehicles can enter and leave the site in a forward direction	A new car space is proposed for 7A Spencer Street which is situated on the access handle. The existing car parking structure is proposed to remain.	No.

Part 8.3 Driveways		
Section 4.2		
DCP Control	Proposal	Compliance
b. Provision must be available within the property to enable vehicles (85th percentile vehicle) to enter and leave the designated parking space in a single 3-point turn manoeuvre.	The new car space proposed for 7A Spencer Street is located on the access handle behind the building line of 7 Spencer Street. However existing carport is retained.	No.
c. All vehicles must be able to enter and leave in a forward direction.	The proposed car spaces for 7A Spencer Street does not allow a vehicle to exit in a forward direction.	No.

The proposal seeks to provide an appropriate car parking space for 7A Spencer Street on the access handle to ensure compliance with AS2890.1. The existing carport within 7A Spencer Street is proposed to be retained.

To ensure that the existing carport is not used, and the proposed parking space is compliant with AS2890.1 Council's Development Engineers have recommended the inclusion of **Condition 3**.

Conditions 3 requires the car parking space for 7A Spencer Street complying with AS 2890.1, (built behind the building line of No 7 Spencer Street). The creation of the car space may require the parking space to be regraded in accordance with AS2890.1 (maximum grade of 5%) and surface area to be connected to a surface drainage system. This condition also requires that the existing carport to not be utilised as a parking space and a fence/gate to be constructed as the end of the access handle.

With the inclusion of **Condition 3**, Council's Development Engineer does not raise any objection to the proposed development.

5.5 Section 7.11 Development Contributions Plan 2020

Nil

5.6 Any Planning Agreement

There are no planning agreements or draft planning agreements for this development.

5.7 Any Matters Prescribed by the Regulations

The proposal is consistent with the *EP & A Regulation 2021*.

6. THE LIKELY IMPACTS OF THE DEVELOPMENT

The proposal seeks to vary the development standards relating to the minimum lot size in Ryde LEP 2014. The proposal is supported by a satisfactory Clause 4.6 justification to vary development standards and demonstrates the proposal does not result in any adverse impacts despite the variation and that the proposal is consistent with the relevant objectives of the standards. The proposal is also not considered to set a precedence as the proposed variation relates to a unique historical subdivision

In view of the above, the proposed development will not have any unfavourable environmental, social, and economic impacts in the locality.

7. SUITABILITY OF THE SITE FOR THE DEVELOPMENT

The site is zoned R2 Low Density Residential. The proposal is for a boundary adjustment with no building works proposed. The assessment has demonstrated the proposal is consistent with the statutory requirements and policy controls. The assessment demonstrates the proposal will not result in any significant adverse impacts upon adjoining properties or the streetscape. The proposal is an appropriate development, and this has been demonstrated in this report. The proposal is considered to be suitable for the site.

8. SUBMISSIONS

In accordance with the Ryde Community Participation Plan, owners of surrounding properties were notified from 26 September 2022 to 14 October 2022. In response, no submission was received from the owner and occupant of the neighbouring properties.

9. THE PUBLIC INTEREST

The public interest is best serviced by the consistent application of the requirements of the relevant environmental planning instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised.

Although the proposal seeks variations to the minimum lot size development standards, the submitted Clause 4.6 justification establishes satisfactory environmental planning grounds for the variations, and approval of the variations is considered consistent with the objectives of the development standards and the R2 Low Density Residential zone.

The proposal has been assessed against the relevant planning instruments and is considered to be acceptable.

On this basis, the proposal is not considered to raise any issues that would be contrary to the public interest.

10. INTERNAL REFERRAL

Senior Coordinator Development Engineer and Landscape Services: Council's Senior Coordinator Development Engineer and Landscape Services has reviewed the proposed development and is supportive of the proposal, subject to 6 recommended conditions of consent.

11. CONCLUSION

The proposed development has been assessed against all relevant matters and is considered satisfactory. It is considered that the likely impacts of the development have been satisfactorily addressed and that the proposal is in the public interest. The site is considered suitable for the proposed development subject to conditions.

Therefore, it is recommended that the application be approved for the following reasons:

1. The proposed subdivision is consistent with the objectives of the relevant provisions of the RLEP 2014 and RDCP 2014, with minimal environmental impacts.
2. The applicant's Clause 4.6 written request to vary the minimum lot size development standards in Clauses 4.1 and 4.1C of Ryde Local Environmental Plan 2014 is acceptable as the proposal still meets the objectives of the zone and is compatible with character of the area. Compliance with these development standards is unreasonable or unnecessary in the circumstances of this specific proposal. There are sufficient environmental planning grounds to justify contravening the development standard.
3. The proposed subdivision is consistent with the approved developments in the immediate locality and will have minimal impact to adjoining properties.
4. The development is not contrary to the public interest.
5. The site is considered suitable for the proposed development.

12. RECOMMENDATION

- A. That the Ryde Local Planning Panel accepts that the Clause 4.6 written request to vary the lot size standards (Clause 4.1(3) and Clauses 4.1C(3)) in LEP 2014 has adequately addressed the matters in subclause (4) and would not be contrary to the public interest as it is consistent with the objectives of the development standard in Clause 4.1(3) and Clause 4.1C(3) and the objectives of the R2 Low Density Residential Zone of Ryde Local Environmental Plan 2014.
- B. That the Ryde Local Planning Panel, as the consent authority, grant consent to LDA2022/287 for proposed boundary adjustment and to remove right of carriageway for Torrens title properties on land at 7 & 7A Spencer Street, Gladesville subject to the recommended conditions in **Attachment 3**.

ATTACHMENTS

- 1 Draft Subdivision Plan
- 2 Applicant's clause 4.6 written request to vary:
 - Clause 4.1(3) Minimum subdivision lot size and
 - Clause 4.1C(3) Minimum lot size for battle-axe lots
- 3 Draft Conditions of Consent

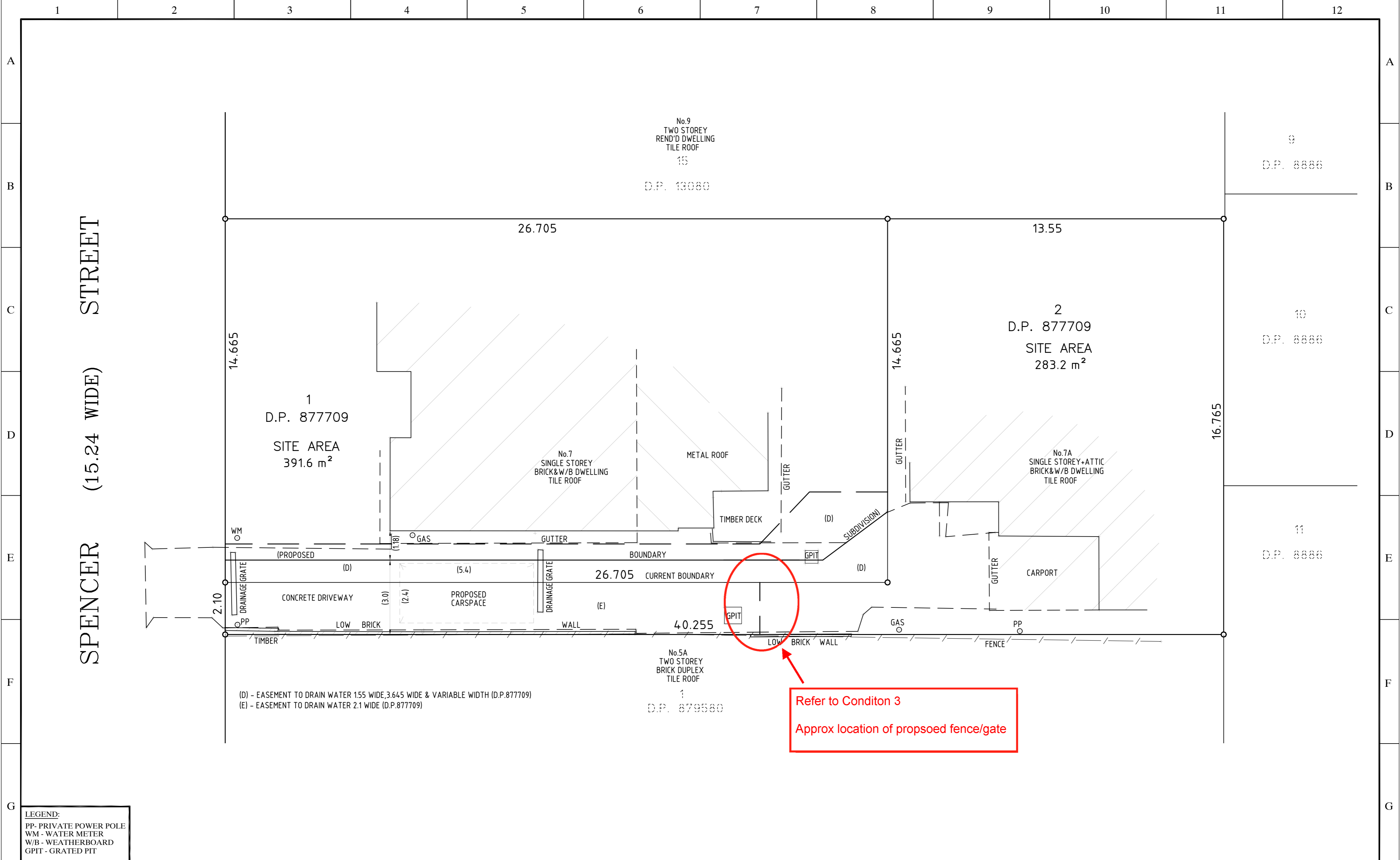
Report prepared by:

Jason Chanphakeo
Assessment Officer – Town Planner

Report approved by:

Sohail Faridy
Senior Coordinator Development Assessment

Sandra Bailey
Executive Manager City Development



LEGEND:
 PP- PRIVATE POWER POLE
 WM - WATER METER
 W/B - WEATHERBOARD
 GPIT - GRATED PIT

IMPORTANT NOTE:
 This plan is prepared from a combination of field survey and existing records for the purpose of designing new constructions on the land and should not be used for any other purpose. The title boundaries shown hereon were not marked by the author at the time of survey. Services shown hereon have been located where possible by field survey. If not able to be so located, known services have been plotted from the records of relevant authorities where available and have been noted accordingly on this plan. Where such records either do not exist or are considered inadequate, a notation has been made hereon. Prior to any demolition, excavation or construction on the site, the relevant authority should be contacted for possible location of further underground services and detailed locations of all services. This note is an integral part of this plan.

REVISION	AMENDMENT	DATE
C	CAR SPACE ADDED	06/12/2022
B	EASEMENTS REMOVED	07/09/2022
A	PROPOSED BOUNDARY REVISED	01/12/2021

SCALE: 1:100 HORIZ. 1: VERT. 1:	A2
CONTOUR INTERVAL: MAJOR: 1 MINOR: 0.5	
HORIZONTAL ORIGIN	
COORD. SYSTEM: -	MARK ADOPTED: E
VERTICAL DATUM	
DATUM: AHD	BM ADOPTED: - RL: -

ATS LAND & ENGINEERING SURVEYORS PTY. LTD.
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PROJECT:
 SITE PLAN OF No.7-7A SPENCER STREET,
 GLADESVILLE,
 BEING LOTS 1&2 IN D.P.877709

CLIENT: JASON DURIE & HUGH SMITH

DATE 13 - 09 - 2021	
SHEET 1 OF 1	
DRAWING No.	REV.
11432-00	C

REQUEST PURSUANT TO CLAUSE 4.6, FOR EXCEPTION TO COMPLIANCE WITH CLAUSES 4.1(3) AND 4.1C(3) OF RYDE LOCAL ENVIRONMENTAL PLAN 2014

This Clause 4.6 Exception Submission has been prepared by Slattery Planning Group on behalf of Mr. Hugh Smith (the Applicant), in relation to Development Application (DA) No. LDA2022/0287 for the site comprising Nos. 7 and 7a Spencer Street, Gladesville (the site).

This Submission is made to City of Ryde Council in support of the DA which seeks consent for a boundary adjustment and the removal of an existing right of carriageway.

1.0 CLAUSE 4.6 OF RYDE LOCAL ENVIRONMENTAL PLAN (RLEP) 2014

Clause 4.6(1) is facultative and is intended to allow flexibility in applying development standards in appropriate circumstances.

Clause 4.6 of RLEP 2014 has the following objectives:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 does not directly or indirectly establish a test that non-compliance with a development standard should have a neutral or beneficial effect relative to a complying development (*Initial* at 87).

Clause 4.6(2) of the LEP specifies that “*development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument*”.

Clause 4.6(3) specifies that 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 requirement in Clause 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard has a better environmental planning outcome than a development that complies with the development standard (*Initial* at 88).

Clause 4.6(4) specifies that development consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *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, and*
- (b) *the concurrence of the Secretary has been obtained.*

Clause 4.6(5) specifies that in deciding whether to grant concurrence, the Secretary must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

2.0 APPROACH TO CLAUSE 4.6

This request has been prepared having regard to:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248;
- NSW Department of Planning and Infrastructure's *Varying Development Standards: A Guide* 2015;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7
- *Moskovich v Waverley Council* [2016] NSWLEC 1015;
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Hansimikali v Bayside Council* [2019] NSWLEC 1353; and
- *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 to the extent that there are effectively five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary as follows:

1. The objectives and purposes of the standard are achieved notwithstanding non-compliance with the development standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying objective or 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 Councils own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and

unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

As Preston CJ, stated in *Wehbe*, the starting point with a SEPP No. 1 objection (now a Clause 4.6 variation) is to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances. The most commonly invoked 'way' to do this is to show that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard.

As noted by Sheahan J in *Liberty Investments Pty Ltd v Blacktown City Council* [2009] NSWLEC 7, the considerations identified by Preston CJ in *Wehbe* are not intended to be exhaustive or applied as a code, and accordingly there may be other bases for considering that compliance with a development standard is unreasonable or unnecessary.

Preston CJ, in *Wehbe* states that "... *development standards are not ends in themselves but means of achieving ends*". Preston CJ goes on to say that as the objectives of a development standard are likely to have no numerical or qualitative indicia, it logically follows that the test is a qualitative one, rather than a quantitative one. As such, there is no numerical limit which a variation may seek to achieve.

The above notion relating to 'numerical limits' is also reflected in Paragraph 3 of Circular B1 from the former Department of Planning which states that:

As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard.

It is important to emphasise that in properly reading *Wehbe*, an objection submitted does not necessarily need to satisfy all of the tests numbered 1 to 5 and referred to above. This is a common misconception. If the objection satisfies one of the tests, then it may be upheld by a Council or the Court standing in its shoes. Irrespective, an objection can also satisfy a number of the referable tests.

In *Wehbe*, Preston CJ, states that there are three (3) matters that must be addressed before a consent authority (Council or the Court) can uphold an objection to a development standard as follows:

1. The consent authority needs to be satisfied the objection is well founded;
2. The consent authority needs to be satisfied that granting consent to the DA is consistent with the aims of the Policy; and
3. The consent authority needs to be satisfied as to further matters, including non-compliance in respect of significance for State and regional planning and the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Further, it is noted that the consent authority has the power to grant consent to a variation to a development standard, irrespective of the numerical extent of variation (subject to some limitations not relevant to the present matter).

The decision of Pain J, in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 suggests that demonstrating that a development satisfies the objectives of the

development standard is not necessarily sufficient, of itself, to justify a variation, and that it may be necessary to identify reasons particular to the circumstances of the proposed development on the subject site.

Further, Commissioner Tuor, in *Moskovich v Waverley Council [2016] NSWLEC 1015*, considered a DA which involved a relatively substantial variation (65%) to the FSR control. Some of the factors which convinced the Commissioner to uphold the Clause 4.6 variation request were the lack of environmental impact of the proposal, the characteristics of the site such as its steeply sloping topography and size, and its context which included existing adjacent buildings of greater height and bulk than the proposal.

The decision suggests that the requirement that the consent authority be satisfied the proposed development will be in the public interest because it is “*consistent with*” the objectives of the development standard and the zone, is not a requirement to “*achieve*” those objectives. It is a requirement that the development be ‘compatible’ with them or ‘capable of existing together in harmony’. It means “*something less onerous than ‘achievement’*”.

In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ found that it is not necessary to demonstrate that the proposed development will achieve a “*better environmental planning outcome for the site*” relative to a development that complies with the development standard.

Finally, in *Hansimikali v Bayside Council [2019] NSWLEC 1353*, Commissioner O’Neill found that it is not necessary for the environmental planning grounds relied upon by the Applicant to be unique to the site.

The following assessment is undertaken pursuant to cl 4.6 and the above principles.

3.0 WHAT IS THE CLAUSE SOUGHT TO BE VARIED?

3.1 Clauses 4.1(3) and 4.1C(3) of RLEP 2014

Clause 4.1(3) of RLEP 2014 states the following:

“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.”

In this case, the minimum lot size is 580m².

Clause 4.1C(3) states the following:

“Despite clause 4.1, the minimum lot size for a battle-axe lot that is land to which this clause applies is 740 square metres.”

3.2 What is the extent of the non-compliance?

The site currently comprises two (2) torrens title allotments, with the following characteristics:

- No. 7 Spencer Street is located at the front of the site and has an area of 391.6m²;

- No. 7a Spencer Street comprises a battleaxe lot and has an area of 283.2m². If the area of the access handle is excluded, No. 7a Spencer Street has an existing area of 227.1195m².

To this end, both of the existing allotments display the following non-compliances with RLEP 2014:

- No. 7 Spencer Street falls 188.4m² or 32.48% short of the minimum 580m² lot area requirement of Clause 4.1(3); and
- No. 7a Spencer Street falls 512.88m² or 69.3% short of the minimum 740m² lot area requirement for battleaxe allotments at Clause 4.1C(3) of RLEP 2014.

The proposed boundary adjustment will result in the following areas:

- No. 7 Spencer Street will have an area of 365m² which falls 215m² or 37% short of the minimum 580m² lot area requirement of Clause 4.1(3); and
- No. 7a Spencer Street will have a total site area of 309.8m². Excluding the area of the access handle, the site area will remain as per the existing area of 227.1195m². The proposal therefore maintains the existing 512.88m² or 69.3% departure from the minimum 740m² lot area requirement for battleaxe allotments at Clause 4.1C(3) of RLEP 2014.

Figure 1 below provides a comparison between the existing and proposed allotment configurations.

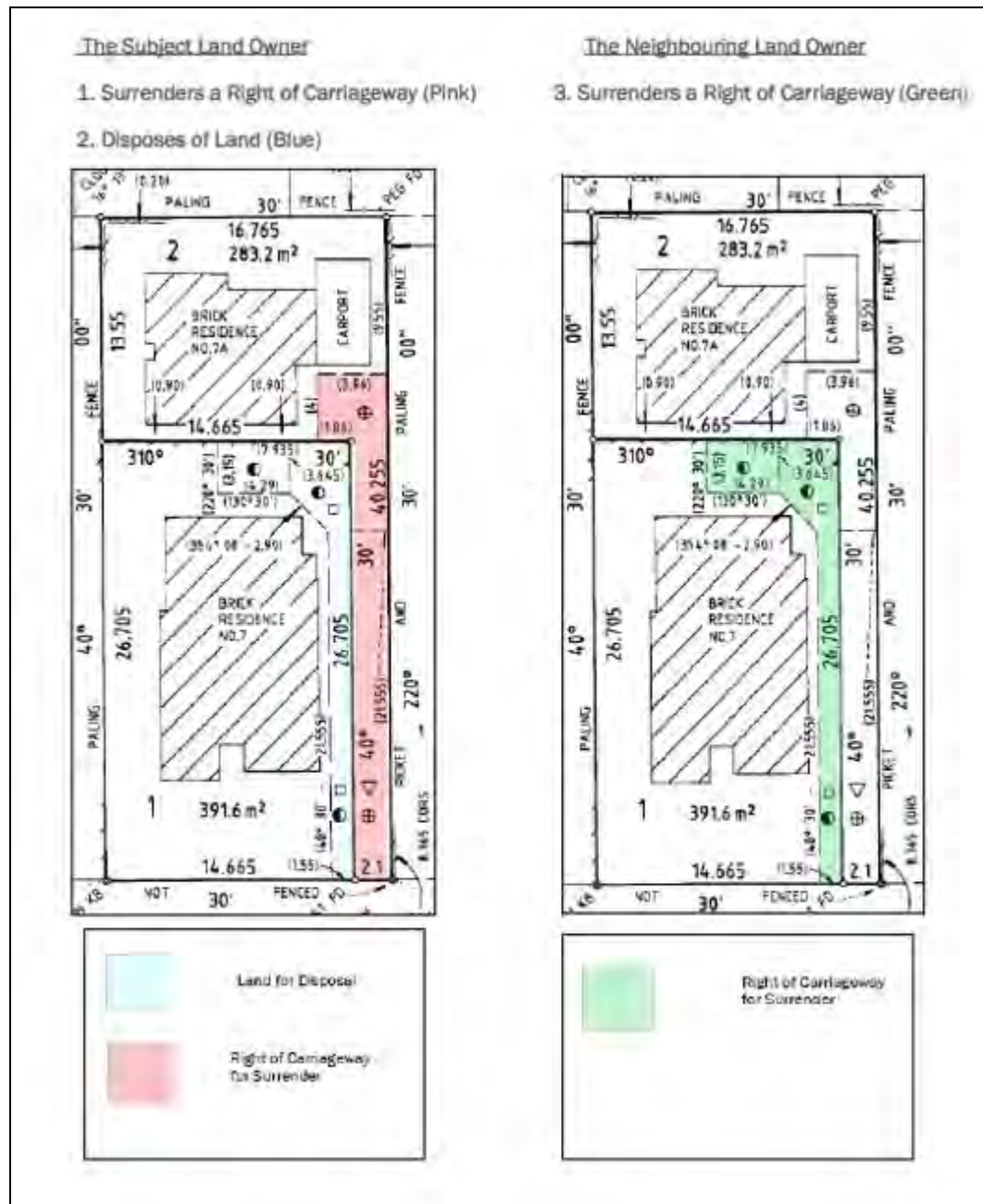


Figure 1: Comparison between the existing and proposed lot configurations (Source: Hugh Smith)

4.0 CLAUSE 4.6(3)(a) - IS COMPLIANCE WITH THE STANDARD UNREASONABLE AND UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

4.1 Clause 4.1 Objectives are achieved

The objectives of Clause 4.1 of RLEP 2014 are as follows:

- (a) “to retain streetscape, amenity, landscaped areas and private open space in residential zones,

- (b) *to ensure that lot sizes enable sufficient areas of open space within each lot so as to enable the retention and embellishment of green linkage corridors in residential zones.”*

(a) to retain streetscape, amenity, landscaped areas and private open space in residential zones

The proposed boundary adjustment will have no material impact in terms of the streetscape, as no physical works are proposed by this DA. To this end, the proposal will retain the existing streetscape characteristics.

The proposal will improve the amenity of Nos. 7 and 7a Spencer Street by improving the functionality of access and circulation spaces, and remove the requirement for shared vehicular access.

The proposal will not alter any existing landscaped area or private open spaces, as no physical works are proposed.

To this end, the proposal is considered to achieve consistency with objective 4.1(a) despite the non-compliance with Clause 4.1(3) of RLEP 2014.

(b) to ensure that lot sizes enable sufficient areas of open space within each lot so as to enable the retention and embellishment of green linkage corridors in residential zones

The proposal maintains the existing provision of open space within both allotments as no physical works are proposed by this DA. The proposal merely seeks to realign the boundary which runs the length of the existing driveway, which will have no bearing on any areas of open space of landscaping for either allotment.

To this end, the proposal is considered to achieve consistency with objective 4.1(b) despite the non-compliance with Clause 4.1(3) of RLEP 2014.

4.2 Clause 4.1C Objectives are achieved

The objectives of Clause 4.1C(3) of RLEP 2014 are as follows:

- (a) *“to maintain visual amenity and character of the land to which this clause applies,*
- (b) *to retain the residential amenity of that land by providing suitable landscaped areas and vehicular access.”*

(a) to maintain visual amenity and character of the land to which this clause applies

The proposal will not have any impact on existing visual amenity or character as no physical works are proposed and the realignment of the boundary and removal of the existing right of carriageway will not have any visual impact. Furthermore, the proposal will not alter the existing character of the land which will remain as two (2) torrens title allotments, each containing a detached dwelling house.

To this end, the proposal is considered to achieve consistency with objective 4.1C(a) despite the non-compliance with Clause 4.1C(3) of RLEP 2014.

(b) to retain the residential amenity of that land by providing suitable landscaped areas and vehicular access

The proposal maintains all existing landscaped areas on both Nos. 7 and 7a Spencer Street (see **Figure 1**). The proposal will result in the existing driveway being part of No. 7a Spencer Street only, with parking accommodated within the existing carport and on the driveway area. Parking for No. 7 Spencer Street will be provided in the existing offstreet car parking area (see **Figure 2** below). To this end, the proposal will generally maintain the status quo in terms of parking and access.



Figure 2: Aerial view of Nos. 7 and 7a Spencer Street showing access and parking arrangements (Source: Hugh Smith)

Having regard to the preceding discussion, it is considered that the proposal is consistent with objective (b) despite the non-compliance with Clause 4.1C(3) of RLEP 2014.

4.3 Would the underlying object or purpose of the standard be defeated or thwarted if compliance was required, such that compliance is unreasonable or unnecessary?

It is not considered that the underlying objective of the Standards is irrelevant to the proposal, however, as demonstrated herein, it is submitted that the proposal is able to achieve consistency with the intent of the Standards, despite the non-compliances.

4.4 Has the development standard 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?

It is not considered that the Standards have been virtually abandoned or destroyed by Council's actions, however it is noted that the torrens title allotments were approved by Council with areas that don't meet the minimum area requirements, and a similar subdivision exists at No. 17 Spencer Street. Furthermore, and having regard to the particulars of this Application, the proposal's consistency with the objectives of Clauses 4.1 and 4.1C of RLEP 2014 and the lack of physical, amenity of environmental impacts, it is considered that flexibility in the application of the Standards is warranted.

5.0 CLAUSE 4.6(3)(b) - ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

5.1 What is the aspect or feature of the development that contravenes the development standard?

As discussed previously, the proposed boundary adjustment and removal of the existing right of carriageway results in the failure to comply with the development standards (noting that the proposal does not alter the existing non-compliance with Clause 4.1C(3) of RLEP 2014). It is noted that the existing allotments already fail to meet the development standards.

5.2 Why is contravention of the development standard acceptable?

In this instance, it is considered that the contravention of the development standards is acceptable as the proposal will improve the functionality and amenity of both properties through the boundary adjustment and removal of the existing right of carriageway. There will no longer be any requirement for shared vehicular access and parking to the benefit of the occupants of each lot. Furthermore, these amenity and functionality gains are achieved without any physical works or changes to the appearance of the properties when viewed from adjoining properties or the public domain. Finally, the proposal maintains the existing provision of landscaping and open space within each property.

6.0 The Proposed development is in the public interest because it is consistent with the objectives of the particular standard and the zone objectives (cl4.6(4)(a)(ii))

Having regard to the acceptable environmental impacts, and the merits of the proposed development, it is considered that the public interest is being met by the proposed development, despite the non-compliance.

6.1 Objectives of the Standards

The objectives of the standards and the consistency of the proposal with those objectives are considered in detail above

6.2 Zone objectives

The site is located within the R2 Low Density Residential zone pursuant to RLEP 2014.

The objectives of the R2 zone are as follows:

- *“To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a variety of housing types.”*

The proposed development achieves the above objectives as follows:

- the proposal maintains the existing provision of two (2) detached dwellings within a low density residential environment and the maintenance of modest lot sizes adds a degree of affordability to the properties; and
- the proposal maintains two (2) detached dwellings on small torrens title allotments, which maintains a contribution to the variety of housing types in the locality.

To this end, the proposal is consistent with the relevant objective of the zone despite the non-compliance with development standards.

7.0 Requirements for Planning Secretaries concurrence

The Planning Secretaries concurrence may be assumed pursuant to Planning Circular PS18_003 issued 21 Feb 2018. Nevertheless the proposal is considered against the matters to which the Secretary is required to have regard below.

7.1 **Clause 4.6(5)(A) - Matters of State or Regional Environmental Planning**

The proposed contravention of the Standard does not raise any matter of significance for State or regional environmental planning.

7.2 **Clause 4.6(5)(B) - The Public benefit of maintaining the standard**

For all of the reasons outlined above, and the absence of environmental harm, there is greater public benefit in permitting the contravention than in maintaining the standard.

7.3 **Clause 4.6(5)(C) – Any Other Matters Required to Be Considered**

There are no other known matters required to be taken into consideration by the Director-General before granting concurrence.

As can be seen from the discussion herein, the proposed development is consistent with the objectives of the development standards and R2 Low Density Residential zone pursuant to RLEP 2014 despite the non-compliance with Clauses 4.1(3) and 4.1C(3) of RLEP 2014.

It is considered that the proposal has adequately addressed the matters outlined in Section 4.6(3) – (5) of RLEP 2014.

8.0 CONCLUSION

Having regard to the discussion contained herein, it is considered that the matters required to be addressed, pursuant to Clause 4.6 of RLEP 2014, the five-part test established in the Land and Environment Court and the Varying Development Standards: A Guide, have been fully canvassed herein.

Having regard to the particulars of the proposal, as outlined above, it is considered that there would be no material benefit to requiring the proposal to comply with Clauses 4.1(3) and 4.1C(3) of RLEP 2014 and on this basis, an exception to Clauses 4.1(3) and 4.1C(3) of RLEP 2014 is considered well-founded, and worthy of Council's support.

Conditions of Consent for LDA2022/0287 :-**GENERAL**

The following conditions of consent included in this Part identify the requirements, terms and limitations imposed on this development.

1. **Approved Plans/Documents.** Except where otherwise provided in this consent, the development is to be carried out strictly in accordance with the following plans (stamped approved by Council) and support documents:

Document Description	Date	Plan No/Reference
Site Plan	6/12/2022	Drawing no: 11452-00, Revision: C, Prepared by ATS Land & Engineering surveyors Pty Ltd

(Reason: To ensure the development is carried out in accordance with the determination).

2. **Design and Construction Standards.** All engineering plans and work inside the property shall be carried out in accordance with the requirements of the relevant Australian Standard. All Public Domain works or modification to Council infrastructure which may be located inside the property boundary, must be undertaken in accordance with Council's 2014 DCP 2014 Part 8.5 (Public Domain Works), except otherwise as amended by conditions of this consent.

(Reason: To ensure that all works are undertaken in accordance with any relevant standard and DCP requirements.)

PRIOR TO SUBDIVISION WORKS CERTIFICATE

3. **Parking Space and Driveway Access for No 7A Spencer Street.** To facilitate vehicle access and accommodate a parking space servicing No 7A Spencer Street in the approved location behind the building line of No 7, the following works must be undertaken.
- (a) The parking space must have grades compliant with AS 2890.1. That is, a maximum 5% longitudinal for a parking module. This may require regrading the driveway and the area of the parking space so as to conform with cut/ fill levels deviating no greater than 150mm beyond the existing levels.
 - (b) Surface areas must be graded to a surface drainage system which is to discharge to the kerb in a manner which is consistent with Council's DCP.
 - (c) To ensure the existing carport is no longer utilised as a parking space, a fence and access gate is to be erected at the end of the access handle.

Plans and specification depicting the required works in accordance with this condition are to be provided with the application for a Subdivision Works Certificate.

(Reason: To ensure each lot has safe and appropriate provision for access by vehicles, and pedestrians.)

PRIOR TO SUBDIVISION CERTIFICATE

The following conditions in this Part of the consent apply to the Subdivision component of the development.

All conditions in this Part of the consent must be complied with prior to the issue of a Subdivision Certificate.

4. **Final plan of subdivision - Title Details.** The final plan of subdivision shall note all existing and/or proposed easements, positive covenants and restrictions of the use of land relating to the title.

(Reason: To disclose any easements or covenants burdening the land.)

5. **Removal of encroachments.** All structures, services etc. are to be wholly contained within the legal property boundaries of each lot. All existing structures and services etc are either to be demolished, relocated and/or have appropriate easement/s registered over the encroachment to ensure their legal operation.

(Reason: To avoid dispute over the maintenance or preservation of encroaching structures.)

6. **88B Instrument.** The submission of an instrument under Section 88B of the Conveyancing Act 1919 creating any Easements, Positive Covenants and Restrictions on use (where required) noting the "Council of the City of Ryde" being the authority empowered to release vary or modify the same.

(Reason: To facilitate the registration of any instrument accompanying the subdivision certificate.)

7. **Subdivision Certificate - Compliance Certificates.** The following compliance certificates must be provided to Council prior to the release of the Subdivision Certificate;

(a) Surveyor Certification – A registered surveyor must certify that necessary easements have been created for all services and structures which encroach into adjacent lots and that all remaining services, dwelling and structures are contained wholly within their respective allotments.

(b) A statement of compliance from either the builder or surveyor, together with either photos or works-as-executed plans, that the works required under the condition "*Parking Space and Driveway Access for No 7A Spencer Street.*" has been completed in full.

(Reason: To ensure the newly created lots have access to and can maintain essential services.)

End of Consent