

**Item 2****60 Winbourne Street, WEST RYDE****Torrens title subdivision of existing dual occupancy (attached).**

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**Report prepared by:** Town Planner**Report approved by:** Senior Coordinator - Development Assessment  
Manager - Development Assessment**City of Ryde  
Local Planning Panel Report**

<b>DA Number</b>	LDA2024/0108
<b>Site Address &amp; Ward</b>	60 Winbourne Street, West Ryde West Ward
<b>Zoning</b>	R2 Low Density Residential
<b>Proposal (as amended)</b>	Torrens title subdivision of existing dual occupancy (attached).
<b>Property Owner</b>	Gold Emporium Pty Ltd
<b>Applicant</b>	The Trustee For the Cordony Constructions Family Trust
<b>Report Author</b>	Jason Chanphakeo
<b>Lodgement Date</b>	4 June 2024
<b>Notification - No. of Submissions</b>	Nil
<b>Cost of Works</b>	\$0.00
<b>Reason for Referral to LPP</b>	Departure from development standards – contravention of floor space ratio development standard by more than 10% - Schedule 1, Part 3 of Local Planning Panels Direction.

Recommendation	Approval
Attachments	<ol style="list-style-type: none"><li>1. Draft Conditions of Consent</li><li>2. Proposed subdivision plans</li><li>3. Clause 4.6 written variation request to FSR</li></ol>

## 1. Executive Summary

The subject application at 60 Winbourne Street, West Ryde (Lot 3 DP 412691) seeks consent for Torrens title subdivision of existing dual occupancy (attached).

The site currently accommodates a two-storey dual occupancy (attached) with a tile pitched roof, which was approved under LDA2020/0256 on 17 May 2021. LDA2020/0256 also approved for the development to be strata subdivided. A final occupation certificate was issued by a private certifier on 8 April 2024.

The application is reported to the Ryde Local Planning Panel for determination as it proposes a departure from a development standard being in excess of 10%. The application is accompanied by a Clause 4.6 written request to contravene Clause 4.4 Floor Space Ratio development standard under the Ryde Local Environmental Plan 2014 (RLEP 2014).

Clauses 4.4(2) of RLEP 2014, prescribes that the maximum floor space ration (FSR) for the buildings on the subject site is not to exceed 0.5:1. The existing development has an overall FSR of 0.49:1, however as the application seeks for Torrens title subdivision of the development, this results in the FSR for Lot 1 being 0.419:1 and Lot 2 being 0.589:1. The subdivision of land results in Lot 2 exceeding the development standard by 39.05m<sup>2</sup> or 17.77%.

The submitted Clause 4.6 written variation satisfies the pre-conditions for a consent authority to allow a variation to the varied. The written request demonstrates sufficient environmental planning grounds to justify the contravention. The contravention does not alter the existing built form and does not result in any additional impacts on adjoining properties.

The application was not required to be notified in accordance with the Ryde Community Participation Plan and Procedure. The proposal has been assessed in accordance with the relevant environmental planning instruments and local provisions in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP & A Act). The proposal would not result in any unacceptable impacts upon the streetscape or the amenity of surrounding properties. The proposal does not raise any issues that would be contrary to the public interest, and it is considered to be a suitable form of development for the site.

## 2. The Site and Locality



**Figure 1:** Aerial photography of the subject site (outlined in orange) and the surrounding locality.

The site is legally described as Lot 3 within DP 412691 and is known as 60 Winbourne Street, West Ryde. The site is an irregular shaped corner allotment with the site area of 963.4m<sup>2</sup>. The site has a frontage of 24.77m to Winbourne Street and 36.08m to Hermoyne Street.

The area and dimensions of the site are shown in the table below:

<b>60 Winbourne Street</b>	
Northern boundary (rear boundary)	41.68m
Eastern boundary (frontage to Winbourne Street)	18.29m
Splayed corner to Winbourne and Hermoyne Street)	6.48m
Western boundary	27.085m
Southern boundary (frontage to Hermoyne Street)	36.08m
Site area	963.4m <sup>2</sup>

The site currently accommodates a two-storey dual occupancy (attached) consisting of 5 bedrooms each, a pitch tiled room and vehicular access from Hermoyne Street approved under LDA2020/0256 on 17 May 2021.

## 3. The Proposal

Consent is sought for Torrens title subdivision of an existing dual occupancy (attached) approved under LDA2020/0256.

The proposed Torrens title subdivision comprises **(Figure 2)**:

- Lot 1 – 523.2m<sup>2</sup> in area with a 17.005m front boundary to Hermoyne Street, the allotment has a secondary frontage to Winbourne Street of 18.285m and a splayed frontage to the intersection of the two roads of 8.475m.

- Lot 2 – 439.5m<sup>2</sup> in area with a 11.325m front boundary to Hermoyne Street

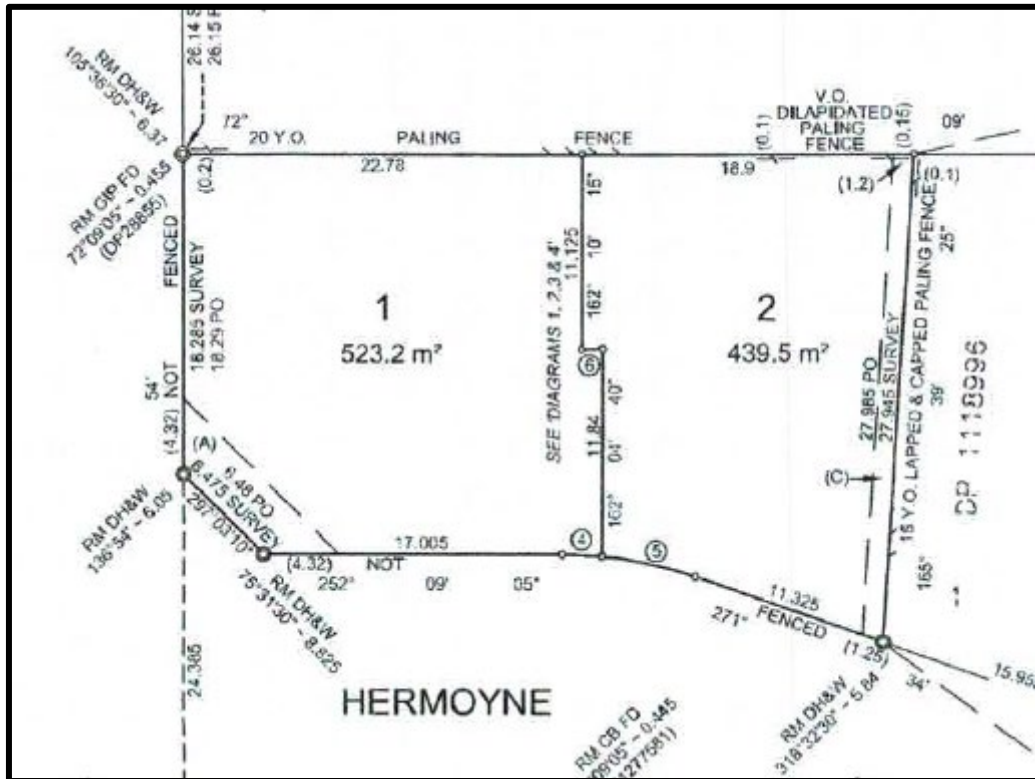


Figure 2: Proposed plan of subdivision

#### 4. Background

##### History of the site

Date	Action
17 May 2021	Council issued development consent to LDA2020/0256 for construction of a dual occupancy (attached) and strata subdivision.
20 January 2022	Council issues development consent to MOD2021/0258 for Section 4.55(1) application to modify LDA2020/0256 seeking to correct discrepancies with conditions relating to trees (T40 and T54).
1 March 2022	Construction Certificate PCA2022/0038 (Ref: P210157/01) was issued for the development by Anthony Protas.
8 April 2024	A Final Occupation Certificate (Ref P210157/01) was issued by Anthony Protas.

## Application History

Date	Action
4 June 2024	Subject Development Application lodged with Council.
12 June 2024	A request for information was sent to the applicant requesting a written Clause 4.6 variation request to address Clause 4.4 of RLEP. A Clause 4.6 variation request is required as upon subdivision of the development Lot 2 will have a FSR of over 0.5:1.
20 June 2024	The applicant submitted the written Clause 4.6 variation request to address the concerns raised regarding the breach of Clause 4.4 of RLEP for Lot 2 upon subdivision.
26 June 2024	A request for information was sent to the applicant regarding concerns that the written Clause 4.6 variation request notes incorrect figures.
26 June 2024	The applicant submitted an amended Clause 4.6 variation request noting the correct figures.

## 5. Planning Assessment

### 5.1 Environmental Planning and Assessment Act

All relevant matters for consideration under Section 4.15 have been addressed in the assessment of this application.

### 5.2 State Environmental Planning Instruments

The assessment of Local Development Application No: LDA2020/0256 for the construction of a dual occupancy (attached) and strata subdivision was subject to the provisions of the following instruments:

- State Environmental Planning Instrument No 55 - Remediation of Land
- State Environmental Planning Instrument (Coastal Management) 2018
- State Environmental Planning Instrument (Vegetation in Non-Rural Areas) 2017
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposed Torren's title subdivision does not alter the approved developments performance against these instruments.

### 5.3 Ryde Local Environmental Plan 2014

Under Ryde LEP 2014, the property is zoned R2 Low Density Residential, and the proposed development is permissible with Council's consent.

### Aims and objectives for R2 Low Density Residential Zone:

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

The proposal seeks to undertake a Torrens title subdivision of existing dual occupancy (attached). The proposal will continue to provide for the housing needs of the community within a low-density residential environment and provides for a variety of housing types. The proposed development is considered to satisfy the objectives for residential developments.

### Part 4 – Principal development standards

The following table below provides a summary of the applicable Clauses in respect to the principal development standards outlined under Part 4 of RLEP 2014 for Torrens title subdivisions:

Ryde LEP 2014	Proposal	Compliance
<b>Clause 4.1A Dual occupancies (attached) subdivisions</b>		
<p>Despite clause 4.1, development consent may be granted for the Torrens title subdivision of a lot or subdivision of a lot under the <i>Strata Schemes Development Act 2015</i> if—</p> <p>(a) Before the day Ryde Local Environmental Plan 2014 (Amendment No 28 commences, a development application for a dual occupancy (attached) and an occupation certificate has been issued for that development, and -</p> <p>(i) The lot to be subdivided has an area of at least 580 square metres, and</p> <p>(ii) 1 dwelling will be situated on each lot resulting from the subdivisions, and</p> <p>(iii) Each resulting lot will have an area of not less than 290 square metres, or</p> <p>(b) on or after the day Ryde Local Environmental Plan 2014 (Amendment No 28) commences, a development application made for a dual occupancy (attached) has been approved for the lot, and—</p>		
	Consent was granted to LDA2020/256 after the commencement of Amendment No. 28 (5 March 2021), therefore Clause 4.1a(b) applies to the development.	



Ryde LEP 2014	Proposal	Compliance
(i) the lot to be subdivided a minimum 580m <sup>2</sup>	963.4m <sup>2</sup>	Yes
(ii) 1 dwelling each lot	1 dwelling each lot	Yes
(iii) Each lot at least 290m <sup>2</sup>	Lot 1 – 523.2m <sup>2</sup> Lot 2 – 439.5m <sup>2</sup>	Yes
(iv) Primary road frontage equal or > 7.5 metres	Lot 1 – 17.005m Lot 2 - 11.325m	Yes
<b>Clause 4.1B(2) Minimum lot sizes for dual occupancies and multi dwelling housing</b>		
(a) Minimum 580 m <sup>2</sup>	963.4m <sup>2</sup>	Yes
(b) the primary road frontage of the lot is equal to or greater than 15 metres.	18.29m	Yes
<b>Clause 4.3(2) Height of buildings</b>		
9.5m	No change	Yes
<b>Clause 4.4(2) &amp; 4.4A(1) Floor space ratio</b>		
0.5:1 (481.7m <sup>2</sup> )	Whole Lot: 477.9m <sup>2</sup> - 0.496:1	Yes
Lot 1 – 261.6m <sup>2</sup>	Lot 1 – 219.1m <sup>2</sup> = 0.419:1	Yes
Lot 2 – 219.75m <sup>2</sup>	Lot 2 - 258.8m <sup>2</sup> = 0.589:1	<b>No- See Clause 4.6</b>
<b>Clause 4.6 Exceptions to development standards</b>		
(1) The objectives of this clause are as follows— (a) to provide an appropriate degree of flexibility in applying certain development standards to development (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	This application is accompanied by a request to vary the development standard in Clause 4.4(2) floor space ratio.	<b>See discussion below</b>

### Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the RLEP 2014 provides flexibility in the application of planning controls by allowing the consent authority to approve a development application that does not comply with a development standard and where it can be satisfied that compliance with a development standard is ‘*unreasonable or unnecessary*’ and that ‘*there are sufficient environmental planning grounds to justify the contravention*’.

The applicant seeks to vary the Floor Space Ratio development standard (Clause 4.4). Under Clause 4.4(2) of RLEP 2014 the maximum floor space ratio (FSR) for buildings on the subject site must not exceed 0.5:1.

As the proposal seeks consent for Torrens title subdivision of the existing dual occupancy (attached), Lot 1 with the proposed subdivision line can have a maximum floor space of 261.6m<sup>2</sup> and Lot 2 with a maximum floor space of 219.75m<sup>2</sup>.

While the existing dual occupancy has an existing floor space ratio (FSR) of 0.49:1 (477.9m<sup>2</sup>) for the parent lot; upon Torrens title subdivision of the allotment, Lot 1 will have a FSR of 0.419:1 (219.1m<sup>2</sup>) and Lot 2 with a FSR of 0.589:1 (258.8m<sup>2</sup>). The proposed subdivision will result in the proposed Lot 2 exceeding the GFA by 39.05m<sup>2</sup> which equates to a variation of 17.77% to the development standard.

Clause 4.6(3) of Ryde LEP 2014 provides the circumstances under which a development standard can be varied. This clause states:

*(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:*

*(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*

*(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

The applicant has submitted a written Clause 4.6 justification seeking an exception from the maximum floor space ratio development standard for Lot 2 and this is provided as **Attachment 3**.

The applicant has advised that the written request has been set out in accordance with the relevant principles and tests set out by several Land & Environment Court proceedings.

In demonstration that the development standard is unreasonable or unnecessary pursuant to Clause 4.6(3) of Ryde LEP 2014, the applicant has considered whether the development is consistent with the relevant objectives of Clause 4.4. Relevant excerpts from applicant's written request are reproduced below:

Ryde Local Environmental Plan 2014	
Objectives of Clause 4.4 'Floor Space Ratio	How the proposal achieves the objective
<p>(1) The objectives of this clause are as follows—</p> <p>(a) to provide effective control over the bulk of future development,</p> <p>(b) to allow appropriate levels of development for specific areas,</p>	<p>"The bulk and scale of the development has already been determined and deemed appropriate by the Council, with the issue of development consent for the development. No physical changes or works are required to affect the subdivision.</p> <p>The subject site is zoned to accommodate low density residential development. The proposed subdivision of the dual occupancy is the natural progression of the development process enabling its sale and independent living.</p>



(c) in relation to land identified as a Centre on the Centres Map — to consolidate development and encourage sustainable development patterns around key public transport infrastructure.	There will be no disruption of views, loss of privacy or significant loss of solar access because of the technical variation to the maximum floor space ratio for one of the proposed lots. There will be no erosion of bushland or scenic quality.”
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As the Council has already found the dual occupancy development to be acceptable, then Council should be satisfied that the proposed subdivision is acceptable given that a high amenity environment has been achieved on-site.

The proposed conversion of title from Strata to Torrens will not be discernible to an observer viewing the site from the public domain and as the built environment remains unchanged.

As the development proffers alternative means of achieving the objectives of clauses 4.4 based on the site context, strict compliance with the floor space ratio standard is unnecessary.

The variation does not manifest in any adverse planning consequences in terms of streetscape, neighbourhood character or amenity (shadowing and privacy). There are no adverse ‘flow on’ non compliances or adverse environmental impacts arising from the variation in this instance.

Effectively the ratio of floor space to the lot area remains the same as that approved with the Strata Title subdivision. The same area of land is allocated to each dwelling with the proposed Torrens Title subdivision plan. Accordingly, no changes are proposed on-site which will reduce amenity on or off the site.

#### Assessment Officer’s Comment:

Consent was granted to LDA2020/0256 on 12 May 2021 for the construction of a two-storey dual occupancy (attached) with strata subdivision. The strata subdivision areas approved for Lot 1 is 523.2m<sup>2</sup> and Lot 2 is 439.5m<sup>2</sup> with floor space for the whole lot split across the parent lot.

The subject application proposes to convert the type of subdivision from strata title to Torrens title and does not seek consent for any additional buildings works. The dual occupancy (attached) development was designed to meet the principal development standards within the RLEP 2014 and the development controls within RDCP 2014. The orientation of the allotment and its irregular shape resulted in a design response where the lot size for each dwelling differs significantly (83.7m<sup>2</sup>), compared to a similar development on a regular shaped lot. To achieve a suitable front setback to Winbourne Street, the building is sited with the party wall positioned closer to the eastern side boundary. The building is also designed with a substantial setback to the western boundary (Winbourne Street) property boundary in compliance with Council’s DCP for the prescient and retention of significant trees.

If the maximum floor space ratio was strictly applied in this circumstance, the boundary lines would be required to be relocated further west (toward Winbourne

Street). This would result in the amenity for Lot 1 being severely impacted as it would likely require the demolition and redesign of the rear alfresco area and private open space of Lot 1. In this instance, strict compliance with the development standard may not achieve the underlying objectives of residential amenity and economic use/development of land.

The proposed conversion from strata title to Torrens Title subdivision is also considered to not create any new additional non-compliance associated with the development or additional impact to neighbouring dwellings or the streetscape. Despite the numerical non-compliance associated with the floor space for the development, the proposed Torrens title subdivision is consistent with the existing approval for strata subdivision under LDA2020/0256 and meets the objectives of the Act and R2 Low Density Residential Zone.

In this regard, the applicant's written request has adequately demonstrated that compliance with the development standards is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

The approval of the variation will enable the provision of affordable housing stock which meets the zone objectives of:

- Meeting the housing needs of the community within a low-density residential environment, as per the zone objective.
- 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 will be in the public interest because it is consistent with the objectives for development within the zone in which the development is proposed to be carried out.

The proposed conversion of the subdivision from strata to Torrens title is affectively an administrative procedure as no physical works are required to the site.

The proposed subdivision is the natural progression of the application process, enabling ownership of each dwelling.

The proposed departure from the standard does not undermine the development standard, given that the dual occupancy has already been approved and constructed at the site.

Having regard to the above the proposal is consistent with the objectives for the subdivision control and the objectives of the zone.

Assessing Officer's comments:

The proposed Torrens title subdivision results in variation to maximum floor space ratio for the new allotments. The proposal does not result in additional non-compliances nor change the existing dwellings on each lot. As such the variation is primarily a technical non-compliance 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 the proposed development exceeding the maximum floor space ratio for Lot 2, the overall development is consistent with the character of low-density residential developments.

#### Conclusion to Clause 4.6 Consideration

The written submission from the applicant has adequately demonstrated that the contravention of the development standard prescribed by Part 4 of RLEP 2014 is justified under the relevant matters for consideration by Clause 4.6.

The applicant's Clause 4.6 written request to vary the Clause 4.4 Floor space ratio is acceptable as it demonstrates that strict compliance with this development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening this development standard.

Council is satisfied that the applicant's written request has demonstrated that compliance with the development standards is unreasonable or unnecessary in the circumstances of the case, and that sufficient environmental planning grounds have been demonstrated to justify the contravention of the standards.

Accordingly, the departure from the development standard is supported in this instance.

### **5.4 Draft Environmental Planning Instruments**

There are no relevant draft Environmental Planning Instruments for consideration.

### **5.5 Ryde Development Control Plan 2014 (RDCP 2014)**

The provisions of RDCP 2014 have been considered in the assessment under LDA2020/0256 for the dual occupancy (attached) development with strata subdivision. The development remains consistent with the aims and objectives of RDCP 2014. The proposed Torren's title subdivision is subject to the provisions of Clause 4.1A of RLEP 2014 and not subject to the provisions of Section 2.4 – Subdivision of RDCP 2014.

### **5.6 Planning Agreement<sup>1</sup>s OR Draft Planning Agreements**

The application is not the subject of any planning agreements or draft planning agreements.

### **5.7 City of Ryde Section 7.11 - Development Contributions Plan 2020**

Development contributions were applicable for LDA2020/0256 for the dual occupancy (attached) development since the additional dwelling results in a net increase in

residents on the land. The subject Torrens title subdivision application is exempt from the development contributions plan as it does not result in an increase in dwellings.

### **5.8 Any matters prescribed by the regulation**

The Regulations guides the processes, plans, public consultation, impact assessment and decision made by local councils, the Department of Planning, Industry and Environment and others. The matters for consideration contained from clause 61 to clause 64 of *Environmental Planning and Assessment Regulation 2021* are of limited relevance to this application.

## **6. The likely impacts of the development**

The likely impacts of the development have been considered within this report and the assessment demonstrates that the proposal will not have any significant adverse impacts upon any adjoining properties or the environment in general due to the nature of the development. All relevant issues regarding environmental impacts of the development are discussed elsewhere in this report (see the Referrals, Submission and DCP sections). The development is considered satisfactory in terms of environmental impacts.

## **7. Suitability of the site for the development**

The site is zoned R2 Low Density Residential. The proposal is for Torrens title subdivision of a dual occupancy (attached). The proposal has been supported by a Clause 4.6 request that justifies the contravention of the development standard for floor space ratio. 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. The Public Interest**

The public interest is best served by the consistent application of the requirements of relevant Environmental Planning Instruments and by Council ensuring that any adverse effects on the surrounding area and the environment is minimised. The proposal has been assessed against the relevant planning instruments and is considered to be acceptable. The proposal does not result in any adverse impacts upon adjoining properties or the streetscape. On this basis, the proposal is not considered to raise any issues that would be contrary to the public interest.

## **9. Public Notification and Submissions**

In accordance with Council's Community Participation plan, this application for Torrens title subdivision was not required to be notified. No submissions were received.

## **10. Referrals**

Senior Development Engineer

Council's Senior Development Engineer reviewed the proposal and raised no objection to the proposal, subject to conditions of consent which are provided at **Attachment 1**.

## 11. Conclusion

After consideration of the development against section 4.15 of the Environmental Planning and Assessment Act 1979 and the relevant statutory and policy provisions, the proposal is suitable for the site and is not contrary to the public interest.

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

- The proposal is consistent with the objectives for R2 zoned land.
- The proposal has been supported by a satisfactory Clause 4.6 request to vary Clause 4.1A of the Ryde Local Environmental Plan 2014 which demonstrates that compliance is both unreasonable and unnecessary and has provided sufficient environmental planning grounds to support the variation.
- The proposal complies with the statutory provisions set out in the Environmental Planning and Assessment Act 1979.
- The proposal is considered to be low impact to adjoining properties and surrounding environment.
- The proposal is not contrary to the public interest.

## 12. Recommendation

- A. That the Ryde Local Planning Panel accepts that the Clause 4.6 written request to vary the development standard in Clause 4.4 *Floor space ratio* in Ryde Local Environmental Plan 2014 is satisfactory.
- B. That the Ryde Local Planning Panel as the consent authority grant development consent to Local Development Application No. LDA2024/0108 for Torrens title subdivision of an existing dual occupancy (attached) on land at 60 Winbourne Street, West Ryde, subject to the draft conditions of consent contained in **Attachment 1**.

## **ATTACHMENTS**

- 1** Draft Conditions of Consent
- 2** Proposed subdivision plans
- 3** Clause 4.6 written variation request to FSR.

Report prepared by:

**Jason Chanphakeo**  
**Town Planner**

Report approved by:

**Sohail Faridy**  
**Senior Coordinator Development Assessment**

**Carine Elias**  
**Manager Development Assessment**



## GENERAL CONDITIONS

	Condition															
1)	<p>Approved plans and supporting documentation</p> <p>Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.</p> <table><tr><th colspan="5">Approved plans</th></tr><tr><th>Plan Number</th><th>Revision Number</th><th>Plan Title</th><th>Drawn by</th><th>Date of Plan</th></tr><tr><td>34389/S</td><td>-</td><td>Plan of Subdivision of Lot 3 in DP412691</td><td>Simon P. Cheng</td><td>01.02.2023</td></tr></table> <p>In the event of any inconsistency between the approved plans and documents, the approved plans prevail.</p> <p>In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.</p> <p><b>Condition Reason:</b> To ensure all parties are aware of the approved plans and supporting documentation that applies to the development</p>	Approved plans					Plan Number	Revision Number	Plan Title	Drawn by	Date of Plan	34389/S	-	Plan of Subdivision of Lot 3 in DP412691	Simon P. Cheng	01.02.2023
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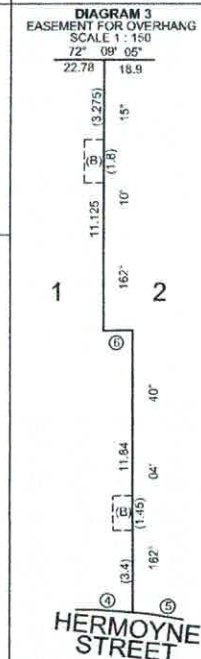
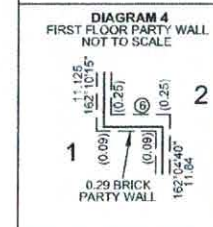
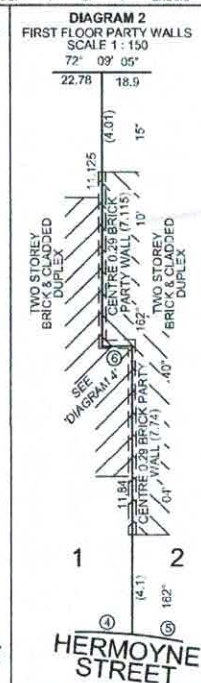
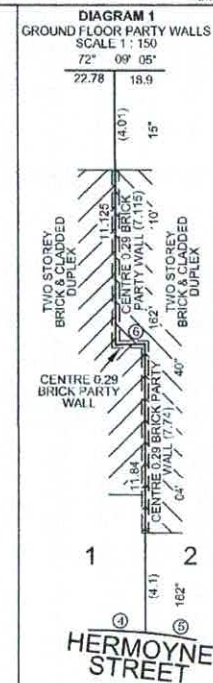
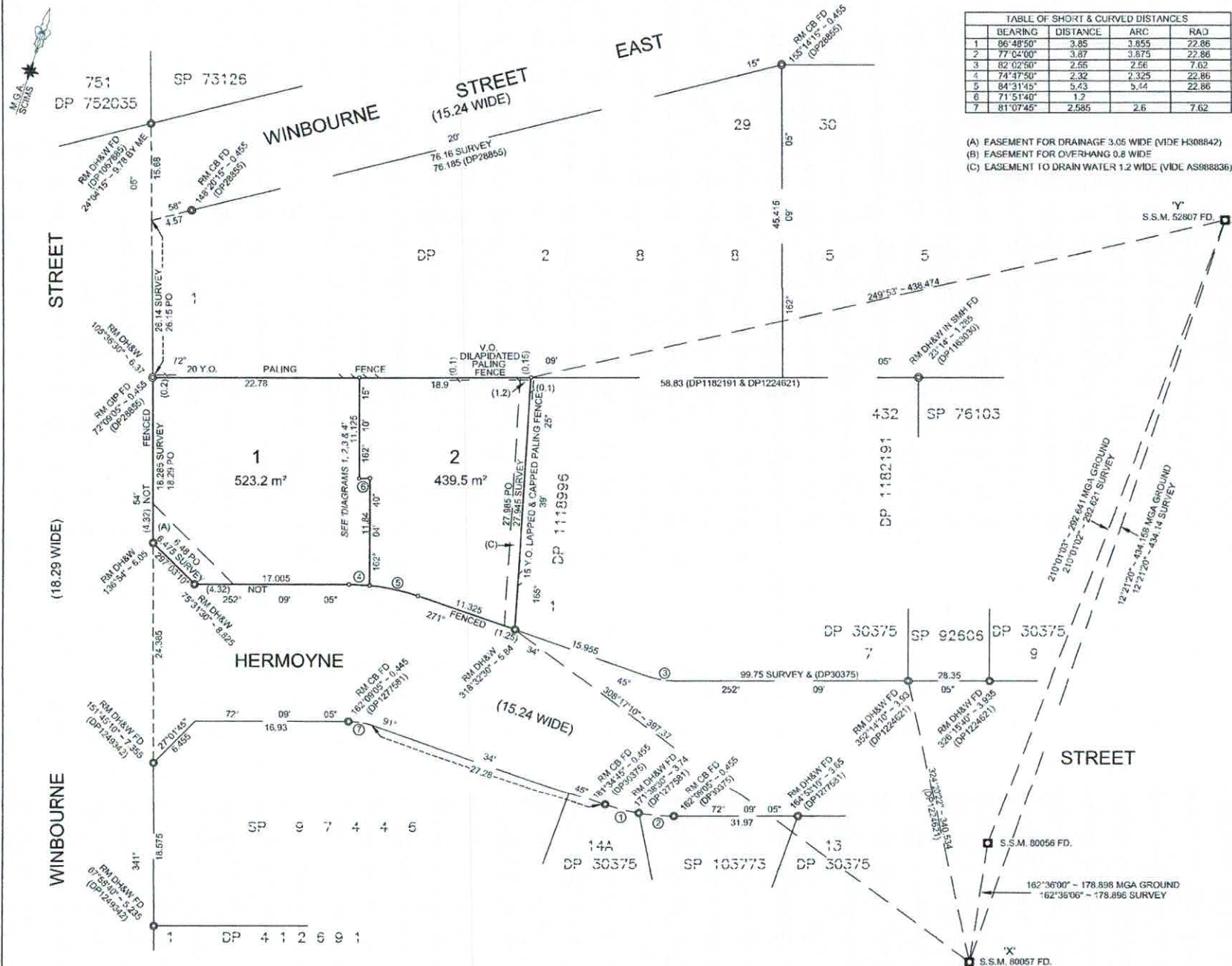
## BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

	Condition						
2)	<p><b>Housing and productivity contribution</b></p> <p>Before the issue of a construction certificate, the housing and productivity contribution (HPC) set out in the table below is required to be made:</p> <table border="1"> <thead> <tr> <th>Housing and productivity contribution</th><th>Amount</th></tr> </thead> <tbody> <tr> <td>Housing and productivity contribution (base component)</td><td>\$12,321.97</td></tr> <tr> <td><b>Total housing and productivity contribution</b></td><td><b>\$12,321.97</b></td></tr> </tbody> </table> <p>The HPC must be paid using the NSW planning portal.</p> <p>At the time of payment, the amount of the HPC is to be adjusted in accordance with the Environmental Planning and Assessment (Housing and Productivity Contributions) Order 2024 (HPC Order).</p> <p>The HPC may be made wholly or partly as a non-monetary contribution (apart from any transport project component) if the Minister administering the Environmental Planning and Assessment Act 1979 agrees.</p> <p>The HPC is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the Environmental</p>	Housing and productivity contribution	Amount	Housing and productivity contribution (base component)	\$12,321.97	<b>Total housing and productivity contribution</b>	<b>\$12,321.97</b>
Housing and productivity contribution	Amount						
Housing and productivity contribution (base component)	\$12,321.97						
<b>Total housing and productivity contribution</b>	<b>\$12,321.97</b>						

	Condition
	<p>Planning and Assessment Act 1979 to the development, or the HPC Order exempts the development from the contribution.</p> <ul style="list-style-type: none"> <li>The amount of the contribution may be reduced under the HPC Order, including if payment is made before 1 July 2025.</li> </ul> <p><b>Condition Reason:</b> To require contributions towards the provision of regional infrastructure</p>
3)	<p><b>Occupation certificate</b></p> <p>Prior to the issue of a subdivision certificate, a full (not partial) occupation certificate associated with the approved development (including related modifications) must be issued for the development prior to the release of the subdivision certificate.</p> <p><b>Condition reason:</b> To ensure that the development works are fully completed and that should the new lot come under separate ownership, such owners will not be burdened by outstanding works.</p>
4)	<p><b>Final plan of subdivision (title details)</b></p> <p>The final plan of subdivision must note all existing and/or proposed easements, positive covenants and restrictions of the use of land relating to the title.</p> <p><b>Condition reason:</b> To disclose any easements or covenants burdening the land.</p>
5)	<p><b>Removal of encroachments</b></p> <p>Prior to the issue of a subdivision certificate, 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.</p> <p><b>Condition reason:</b> To avoid dispute over the maintenance or preservation of encroaching structures.</p>
6)	<p><b>88B Instrument</b></p> <p>Prior to the issue of a subdivision certificate, 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 instrument.</p> <p><b>Condition reason:</b> To facilitate the registration of any instrument accompanying the subdivision certificate.</p>
7)	<p><b>Subdivision certificate (compliance certificates)</b></p> <p>Prior to the issue of a subdivision certificate, the following compliance certificates must be provided to City of Ryde:</p> <ol style="list-style-type: none"> <li>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.</li> <li>Sydney Water (Section 73 Compliance Certificate) – A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water will determine the availability of water and sewer services, which may require extension, adjustment or connection to Sydney Water mains.</li> <li>Ausgrid (Notification of Arrangements for the Provision of Electricity Supply) - A notice must be obtained from Ausgrid to confirm that satisfactory</li> </ol>

	Condition
	<p>arrangements have been made with Ausgrid for the provision of an adequate electricity supply in relation to the proposed development/subdivision. Furthermore, that Ausgrid raises no objection to Council's release of the Plan of Subdivision to allow registration of the development/subdivision.</p> <p>4. Other Utility Providers – Written confirmation confirming compliance with the requirements (including financial costs) of electrical and telecommunication providers (e.g. Telstra).</p> <p><b>Condition reason:</b> To ensure the newly created lots have access to and can maintain essential services.</p>
8)	<p><b>Stormwater Management (Work-as-Executed Plan)</b></p> <p>A Work-as-Executed plan (WAE) of the as constructed Stormwater Management System must be submitted with the application for an Subdivision Certificate. The WAE must be prepared and certified (signed and dated) by a Registered Surveyor and is to clearly show the constructed stormwater drainage system (including any onsite detention, pump/ sump, charged/ siphonic and onsite disposal/ absorption system) and finished surface levels which convey stormwater runoff.</p> <p><b>Condition Reason:</b> To clarify the configuration of the stormwater management system and ensure the appropriate easements are created.</p>
9)	<p><b>Stormwater management (proof of positive / restrictive covenants)</b></p> <p>Prior to the issue of a subdivision certificate, any Positive or Restrictive Covenant(s) relating to particular stormwater components, system configurations and flood measures as required by Council's DCP Part 8.2 (Stormwater and Floodplain Management) must be registered on the subject lot. Copies of the endorsed instruments (including terms) and the Title Certificate must be provided with the application for the Subdivision Certificate for City of Ryde approval.</p> <p><b>Condition reason:</b> This is to ensure that the drainage system and / or flood mitigation measures will be maintained throughout the life of the development by the owner of the site(s).</p>
10)	<p><b>Boundary fences</b></p> <p>Prior to the issue of a subdivision certificate, a Boundary Identification Survey (BIS) must be undertaken to confirm the location of the fence(s) relative to the public domain. The survey must be undertaken by a Registered Surveyor and is to clarify any encroachment of posts, gates, etc. Any encroachment will need to be corrected unless otherwise approved to remain by Council's City Infrastructure Department.</p> <p><b>Condition reason:</b> To ensure the boundary fence is clear of the public domain.</p>
11)	<p><b>Easement for overhang</b></p> <p>Prior to the issue of a subdivision certificate, an Easement for Overhang must be defined over any structure overhanging an alternate lot. The easement must be defined on the plans. Any additional terms are subject to City of Ryde approval.</p> <p><b>Condition reason:</b> To ensure the benefitted lot owner has an ability to maintain the structure over the alternate lot whilst the burdened lot owner is not imposed upon greatly by such works.</p>
12)	<p><b>Easement for drainage of water</b></p> <p>Prior to the issue of a subdivision certificate, should any portion of the drainage system servicing one of the lots traverse the alternate lot(s), an Easement for Drainage of Water must be created over the respective part(s) of the drainage system on the alternate lot. Where the subdivision will result in rainwater storage/ detention tanks straddling the new lot boundaries, a reciprocal drainage</p>

	Condition
	<p>easement must be created over the storage, allowing each lot to drain over the alternate lot and warranting shared responsibility in maintenance of the system. The easement width, location and alignment must be in accordance with Council's DCP Part 8.2 (Stormwater and Floodplain Management) and Part 8.4 (Title Encumbrances) and is to be based on recent Works-As-Executed plans of the stormwater system. "Council of the City of Ryde" must be listed as the prescribed authority to release or vary the terms of the easement.</p> <p>Plans and documentation complying with this condition must be submitted with the application for a Subdivision Certificate.</p> <p><b>Condition reason:</b> To ensure drainage services and conveyance of stormwater runoff are maintained.</p>
<b>13)</b>	<p><b>Fibre-ready facilities and telecommunications infrastructure</b></p> <p>Prior to the issue of any subdivision certificate satisfactory evidence is to be provided to the principal certifier that arrangements have been made for:</p> <p>The installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre-ready facilities to be readily connected to any premises that is being or may be constructed on those lots.</p> <p>Alternatively, demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose and; The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.</p> <p>Note: real estate development project has the meanings given in Section 372Q of the Telecommunications Act 1997.</p> <p><b>Condition reason:</b> Statutory requirement</p>
<b>14)</b>	<p><b>Building Code of Australia</b></p> <p>Prior to the issue of a subdivision certificate, certification from a suitably qualified accredited building consultant is required to be submitted to the principal certifier confirming that the development is compliant with the current version of the National Construction Code (NCC) for the following:</p> <ol style="list-style-type: none"> <li>1. Separating Wall. The wall separating the two dwellings has an FRL (Fire Resistance Level) of not less than 60/60/60 extending from the ground to the underside of the roof cladding.</li> <li>2. Smoke Alarms. The smoke alarms in each dwelling are connected to the consumer mains power and are interconnected as there are alarms on each floor level.</li> </ol> <p><b>Condition reason:</b> To ensure that the building complies with the Building Code of Australia requirements.</p>
<b>15)</b>	<p><b>Official property addressing</b></p> <p>Prior to the issue of a subdivision certificate, the administration sheet or strata plan must be prepared in accordance with the official address provided by Council's Spatial Data Services.</p> <p><b>Condition reason:</b> To assist in way finding.</p>



SURVEYING AND SPATIAL INFORMATION REGULATION 2017						
MARK	M.G.A. EASTING	M.G.A. NORTHING	CLASS	PU	METHOD	STATE
SSM 52907	321 673.866	6 258 361.599	D	N/A	FROM SCIMS	FOUND
SSM 80056	321 527.471	6 258 108.213	C	N/A	FROM SCIMS	FOUND
SSM 80057	321 580.968	6 257 937.504	C	N/A	FROM SCIMS	FOUND
COMBINED SCALE FACTOR: 0.999982 MGA ZONE: 56 MGA DATUM: GDA 2020						
M.G.A. CO-ORDINATES WERE ADOPTED FROM S.C.I.M.S. ON 01.02.2023						

**SURVEYOR**  
 Name: SIMON P. CHENG  
 Date: 01.02.2023  
 Reference: 34389 / S

**PLAN OF** SUBDIVISION OF LOT 3 IN DP412691

**LGA:** RYDE  
**Locality:** WEST RYDE  
**Reduction Ratio:** 1: 300  
 Lengths are in metres

**REGISTERED**

**DP**

## Clause 4.6 Justification

# No 60 Winbourne Street West Ryde

## **Introduction - Content of the clause 4.6 request**

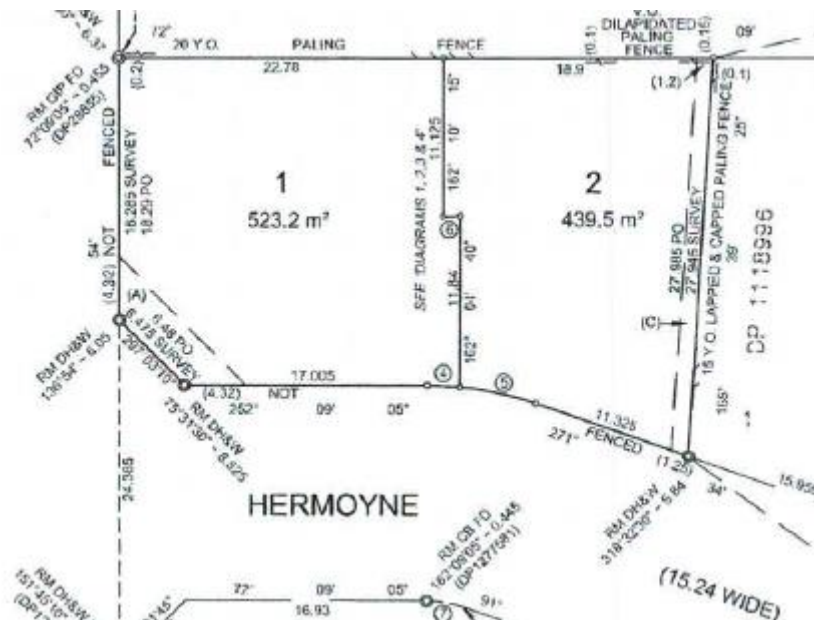
## Background

Development consent No LDA2020/0256 was issued on the 17<sup>th</sup> May 2021 for the erection of a new dual occupancy (attached) and strata subdivision at the subject site.

The development is now complete and both dwellings are occupied.

The applicant wishes to alter the approval by changing the form of subdivision from Strata Title to Torrens Title.

The plan of the proposed subdivision is similar in terms of the approved division of land as per the approved Strata division – proposed plan below:



## Proposed plan of Torrens Title Subdivision



Clause 4.1A relates to Dual occupancy (attached) subdivisions and requires a minimum lot size of 290sqm and a minimum frontage of 7.5m per lot created.

The proposed plan of subdivision will create 2 complying lots in accordance with clause 4.1A.

**Clause 4.4** relates to **Floor space ratio** and states the following:

- (1) *The objectives of this clause are as follows—*
- (a) *to provide effective control over the bulk of future development,*
  - (b) *to allow appropriate levels of development for specific areas,*
  - (c) *in relation to land identified as a Centre on the Centres Map—to consolidate development and encourage sustainable development patterns around key public transport infrastructure.*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The floor space ratio map applies a maximum floor space ratio of 0.5:1 within the zone for an allotment.

As the dual occupancy development already exists, the floor space ratio per proposed lot will be as follows:

Unit 1	Floor space	-	219.1 sqm
	Lot Area	-	<u>523.2</u> sqm
	FSR	-	0.41:1
Unit 2	Floor space	-	258.8 sqm
	Lot Area	-	<u>439.5</u> sqm
	FSR	-	0.58:1
Total for floor space		-	477.9 sqm
Total Site area		-	<u>963.4</u> sqm
Total FSR		-	0.49:1

Based on the above, a technical breach of the FSR control arises, despite no physical changes required on-site to affect the change of subdivision.

It should be noted that the development when approved complied with the floor space ratio applying to the whole site. No additional floor space is proposed as part of this application.

**Clause 4.6** relates to 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.*

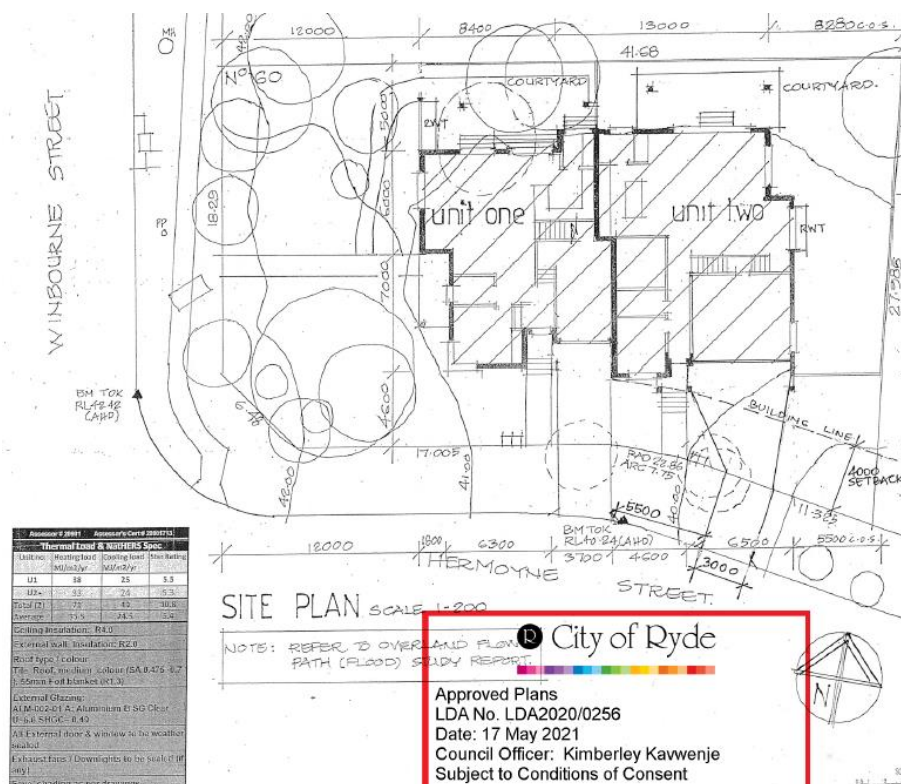
**Comment:**

The proposal gives rise to a non-compliance with the floor space ratio for proposed Lot 2.

Based on Clause 4.4 of the Ryde LEP 2014 a variation of 17.78% or 39sqm arises for proposed Lot 2.

It should be noted that proposed Lot 1 retains a compliant FSR well under the maximum permitted.

It is understood that the design and siting of the dual occupancy (at the time of the initial DA assessment) was dictated by the 12m setback requirement to Winbourne Street as per the DCP requirement for the precinct. The siting of the development accorded with the requirement.



Approved Site plan

A justification for the variation is provided below:

Clause 4.6 of the LEP notably is designed to provide **flexibility when applying development standards particularly when the variation of the standard enables a better development outcome.**

Clause 4.6 of the instrument provides flexibility when applying development standards.

The proposed Torrens Title subdivision relates specifically to an approved development and does not alter aspects of the approval relating to parking, private open space or setbacks for each proposed lot.

It is significant to note that the variation does not result in an increase floor space or development density. The variation does not manifest itself in an overdevelopment of the site as all other standards and controls have been met.

No adverse planning consequences (shadowing, privacy, visual impact, urban design/streetscape, heritage, neighbourhood character) arise with the change in subdivision. It is understood that Torrens Title is preferred by potential buyers as it provides a separate title without the implications of Strata meetings and consulting with the other unit entitlement owner.

The allocation of spaces on-site are effectively fixed as determined by setback controls. Accordingly, approval of the application is not likely to lead to additional floor space opportunities on-site.

For reasons expressed in this submission the 'flexibility' provided by clause 4.6 of the LEP facilitates a planning outcome that does not impact on any adjoining property despite the proposed variation to the maximum floor space ratio development standard.

#### **Application of Clause 4.6**

*(2) 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. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.6(2) of the LEP provides that development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this does not apply to a development standard that is expressly excluded from the operation of this clause.

Clauses 4.4 of the LEP is not expressly excluded from the operation of clause 4.6 and thus Council would have the authority to grant consent to a breach of the specified development standard subject to being satisfied of other matters under clause 4.6.

### **Contravention of a Development Standard**

Clause 4.6(4)(a)(i) of the LEP provides that Council, as consent authority, must not grant development consent for a development that contravenes a development standard unless it is satisfied that a written request prepared by or for the applicant (as required under clause 4.6(3)) has adequately addressed the matters required to be demonstrated by clause 4.6(3).

The matters required to be demonstrated by clause 4.6(3) are considered below.

*(3) 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.*

### **Clause 4.63)(a) - Unreasonable and Unnecessary**

Clause 4.6(3)(a) requires the applicant to provide a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

This requires Council to consider the written request and to form an opinion that it satisfactorily demonstrates that compliance with the development standard is unreasonable or unnecessary in the

circumstances, rather than Council undertaking its own enquiry and forming a direct opinion of satisfaction on whether compliance with the development standard is unreasonable or unnecessary in the circumstances.

The term “unreasonable or unnecessary” is not defined in the relevant environmental planning instruments or in the Act. Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] – [49] identifies 5 ways by which strict compliance with a development standard may be unreasonable or unnecessary. This written request adopts the first way identified by Preston CJ.

*42..... The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

*The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”*

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, the Chief Judge of the Land and Environment Court stated that the commonly cited tests he set out in *Wehbe* remain relevant to a consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances under clause 4.6.

Justice Preston’s analysis requires the following questions to be answered.

1. What are the objectives of the development standard?
2. Does the development proffer an alternative means of achieving the objectives of the development? (unnecessary)
3. Would no purpose be served if strict compliance was required? (unreasonable)

Provided below is a commentary in relation to the above three considerations.

## 1 Objectives of development standard

The stated objectives supporting the development standard are as follows:

- (1) *The objectives of this clause are as follows—*
- (a) *to provide effective control over the bulk of future development,*
  - (b) *to allow appropriate levels of development for specific areas,*
  - (c) *in relation to land identified as a Centre on the Centres Map—to consolidate development and encourage sustainable development patterns around key public transport infrastructure.*

The bulk and scale of the development has already been determined and deemed appropriate by the Council, with the issue of development consent for the development. No physical changes or works are required to affect the subdivision.

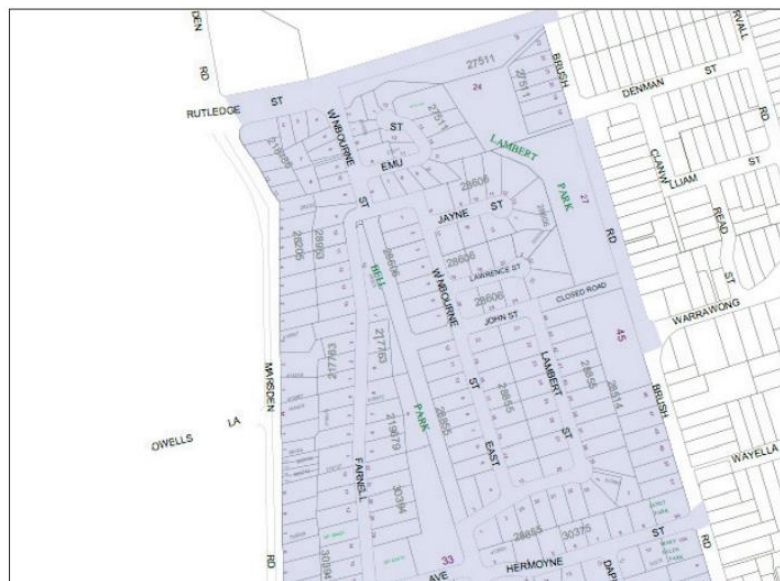
A compliant floor space for each dwelling would necessitate a substantial design change to the approved plan which would require a shift in the development to the west. Such would have the effect of undermining the DCP control applying to Winbourne Street and that of the development consent.

Provided below is an extract from the DCP which requires the following:

### 3.1 West Ryde Special Development Area

#### Controls

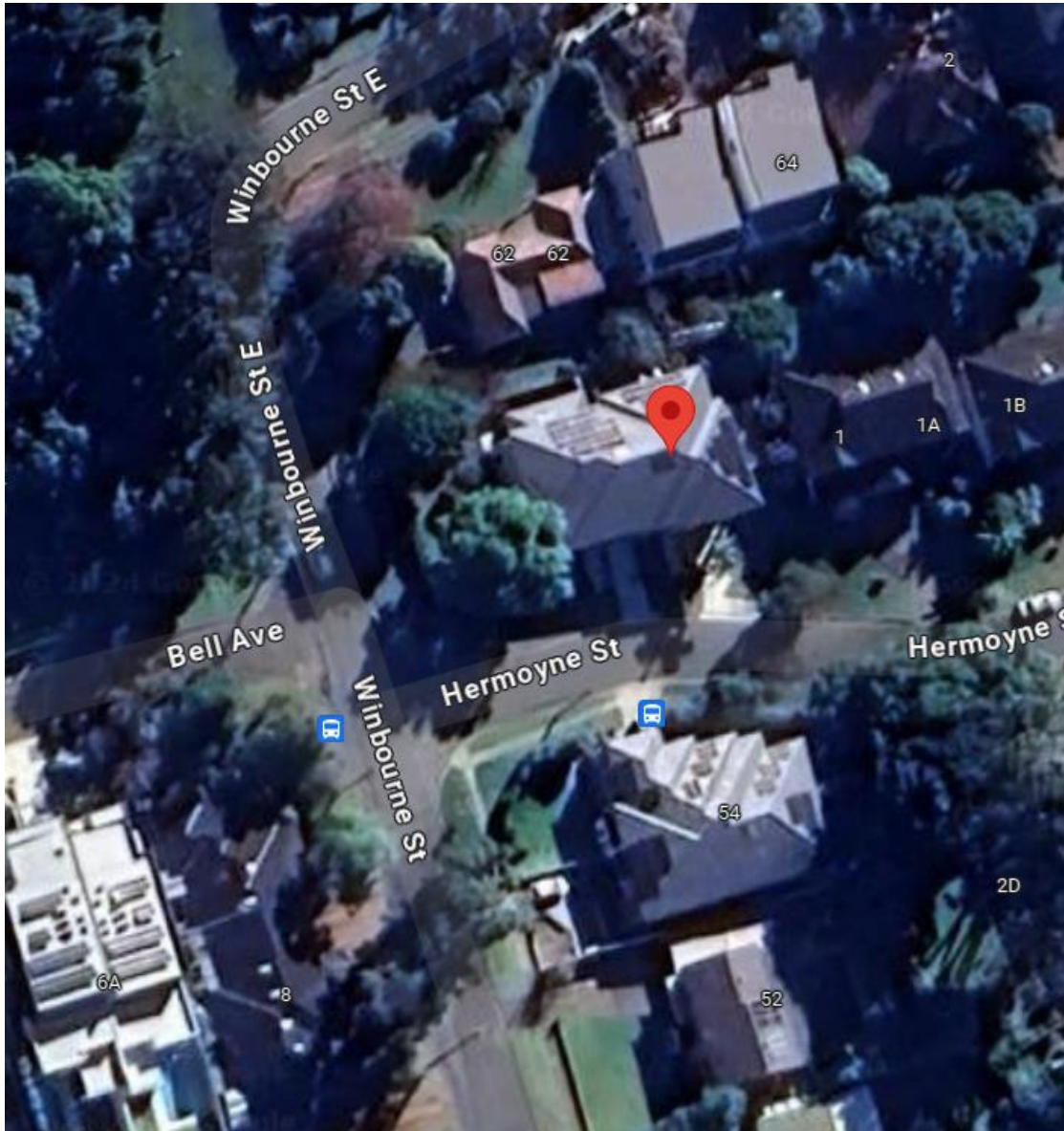
- a. Front building setbacks in the West Ryde Special Development Area are to be consistent with existing setbacks and may be up to 12m in order to ensure this consistency.





As the development has been constructed, a design change is not a feasible option.

Retention of the development as built maintains the consistency with the setback to Winbourne Street as evidenced in the site plan below:



In view of the above, the retention of built form as approved is reasonable and appropriate from an economic and site context point of view.

The subject site is zoned to accommodate low density residential development. The proposed subdivision of the dual occupancy is the natural progression of the development process enabling its sale and independent living.

There will be no disruption of views, loss of privacy or significant loss of solar access because of the technical variation to the maximum floor space ratio for one of the proposed lots. There will be no erosion of bushland or scenic quality.

### **Compliance unnecessary**

As the Council has already found the dual occupancy development to be acceptable, then Council should be satisfied that the proposed subdivision is acceptable given that a high amenity environment has been achieved on-site. The floor space ratio variation is reasonable given that the extent of floor space over the original lot is compliant.

The proposed conversion of title from Strata to Torrens will not be discernible to an observer viewing the site from the public domain and as the built environment remains unchanged.

As the development proffers alternative means of achieving the desired planning outcome based on the site context, strict compliance with the floor space ratio standard is unnecessary.

### **Compliance unreasonable**

There would be no purpose served if strict compliance was required by the consent authority.

The variation does not manifest in any adverse planning consequences in terms of streetscape, neighbourhood character or amenity (shadowing and privacy). There are no adverse 'flow on' non compliances or adverse environmental impacts arising from the variation in this instance.

Effectively the ratio of floor space to the lot area remains the same as that approved with the Strata Title subdivision. The same area of land is allocated to each dwelling with the proposed Torrens Title subdivision plan. Accordingly, no changes are proposed on-site which will reduce amenity on or off the site.

No particular benefit would be derived from the application of the standard in this instance and strict compliance is therefore unreasonable, because the approved development at the site will be unaltered.

- The approval of the variation will enable the provision of affordable housing stock which meets the zone objectives of:

*Meeting the housing needs of the community within a low density residential environment, as per the zone objective.*

- *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 matters required to be demonstrated by subclause (3) have been adequately addressed.

The proposed development will be in the public interest because it is consistent with the objectives for development within the zone in which the development is proposed to be carried out.

The proposed conversion of the subdivision from Strata to Torrens Title is affectively an administrative procedure as no physical works are required to the site.

The proposed subdivision is the natural progression of the application process, enabling ownership of each dwelling.

The proposed departure from the standard does not undermine the development standard, given that the dual occupancy has already been approved and constructed at the site.

Having regard to the above the proposal is consistent with the objectives for the subdivision control and the objectives of the zone.

***(8) 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,*
- (caa) clause 5.5,*
- (ca) clause 4.3, to the extent that it applies to the land identified as “Town Core” on the Ryde Town Centre Precincts Map,*

*(cb) clause 4.1A, to the extent that it applies to the Torrens title subdivision of a dual occupancy (attached),*  
*(cc) clause 6.9.*

The proposal is consistent with the above and relates to two complying lots pursuant to clause 4.1A.

The variation to the floor space standard does not raise any matter of significance for State or regional environmental planning.

There is no public benefit that would be achieved by maintaining strict adherence with the development standard or compromised by approving the plan of subdivision as proposed.

It is contextually appropriate not to strictly apply the development standard in this instance and it is not an abandonment of the standard.

### **Conclusion**

There is no public benefit that would be achieved by maintaining the development standard or compromised by approving the subdivision as proposed.

No adverse matters arise in respect of the above considerations as no physical works are proposed on site to affect the subdivision.

In view of the above, the proposed variation from the development standard is reasonable in this instance and Council should approve the application.

Yours Faithfully

A handwritten signature in dark ink, appearing to read 'Nigel White', with a stylized flourish at the end.

Nigel White  
Bachelor of Applied Science (Environmental Planning)  
July 2024