

4 AUGUST 2020

NOTICE OF MEETING

You are advised of the following meeting:

THURSDAY 13 AUGUST 2020.

City of Ryde Local Planning Panel Meeting No. 6/20

Council Chambers, Level 1A, 1 Pope Street, Ryde - 5.00pm

English

If you do not understand this letter, please come to the 1 Pope Street, Ryde (within Top Ryde Shopping Centre), Ryde, to discuss it with Council Staff who will arrange an interpreter service. Or you may ring the Translating & Interpreting Service on 131 450 to ask an interpreter to contact you. Council's phone number is 9952 8222. Council office hours are 8:30am to 5:00pm, Monday to Friday.

Arabic

إذا لم تفهم محتوى هذه الرسالة، يرجى الحضور إلى 1 Pope Street، Ryde (في Top Ryde Shopping Centre)، Ryde، لمناقشتها مع موظفي المجلس الذين سوف يرتبون للاستعانة بمترجم شفهي. أو قد يمكنك الاتصال بخدمة الترجمة التحريرية والشفهية على الرقم 131 450 لتتطلب من المترجم الاتصال بك. رقم هاتف المجلس هو 9952 8222. ساعات عمل المجلس هي 8:30 صباحاً حتى 5:00 مساءً، من الاثنين إلى الجمعة.

Armenian

Եթե դուք չեք հասկանում սույն նամակի բովանդակությունը, խնդրում ենք այցելել 1 Pope Street, Ryde (որը գտնվում է Top Ryde Shopping Centre-ի մեջ), Ryde, քննարկելու այն Քաղաքային Խորհրդի անձնակազմի հետ, ովքեր ձեզ համար կապահովեն թարգմանչական ծառայություն: Կամ կարող եք զանգահարել Թարգմանչական Ծառայություն 131 450 հեռախոսահամարով և խնդրել, որ թարգմանիչը ձեզ զանգահարի: Խորհրդի հեռախոսահամարն է 9952 8222: Խորհրդի աշխատանքային ժամերն են՝ առավոտյան ժամը 8:30-ից մինչև երեկոյան ժամը 5:00, երկուշաբթիից մինչև ուրբաթ:

Chinese

如果你不明白这封信的内容，敬请前往1 Pope Street, Ryde（位于Top Ryde Shopping Centre内），向市政府工作人员咨询，他们会为您安排口译服务。此外，您也可以拨打131 450联络翻译和口译服务，要求口译员与您联系。市政府电话号码为9952 8222。市政府办公时间为周一至周五上午8:30至下午5:00。

Farsi

لطفاً اگر نمی توانید مندرجات این نامه را درک کنید، به نشانی 1 Pope Street، Ryde (در Top Ryde Shopping Centre) مراجعه کنید تا با استفاده از یک مترجم دراین باره با یکی از کارکنان شورای شهر گفتگو کنید. یا آنکه می توانید با خدمات ترجمه کتبی و شفاهی به شماره 131 450 تماس گرفته و بخواهید که به یک مترجم ارتباط داده شوید. شماره تماس شورای شهر 9952 8222 و ساعات کاری آن از 8:30 صبح تا 5:00 بعد از ظهر روزهای دوشنبه تا جمعه است.

Italian

Se avete difficoltà a comprendere questa lettera, venite in 1 Pope Street, Ryde (dentro al Top Ryde Shopping Centre), Ryde, per discutere con il personale del Comune che organizzerà un servizio di interpretariato. Potete anche contattare il Servizio di Traduzione e Interpretariato al 131 450 per chiedere a un interprete di contattarvi. Il numero di telefono del Comune è il 9952 8222. Gli orari di ufficio del Comune sono dalle 8.30 alle 17 dal lunedì al venerdì.

Korean

이 서신을 이해할 수 없을 경우, 1 Pope Street, Ryde (Top Ryde Shopping Centre 내)에 오셔서 통역사 서비스를 주선할 시의회 직원과 논의하십시오. 혹은 통번역서비스에 131 450으로 전화하셔서 통역사가 여러분에게 연락하도록 요청하십시오. 시의회의 전화번호는 9952 8222입니다. 시의회 사무실 업무시간은 월요일에서 금요일, 오전 8시 30분에서 오후 5시까지입니다.

Meeting Date: Thursday 13 August 2020
Location: Council Chambers, Level 1A, 1 Pope Street, Ryde
Time: 5.00pm

City of Ryde Local Planning Panel Meetings will be recorded on audio tape for minute-taking purposes as authorised by the Local Government Act 1993. City of Ryde Local Planning Panel Meetings will also be webcast.

NOTICE OF BUSINESS

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DECLARATIONS OF INTEREST

DEVELOPMENT APPLICATIONS

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| 2 | 38 Wicks Road, North Ryde - Torrens Title subdivision to create two lots and construction of a dwelling house on each resulting lot - LDA2019/0411 | 63 |

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2 38 Wicks Road, North Ryde - Torrens Title subdivision to create two lots and construction of a dwelling house on each resulting lot - LDA2019/0411

Report prepared by: Creative Planning Solutions

Report approved by: Senior Coordinator - Assessment; Manager - Development Assessment; Director - City Planning and Environment

Report dated: 04 August 2020
BP20/801

File Number: GRP/09/6/12/1/2 -

**City of Ryde
Local Planning Panel Report**

DA Number	LDA2019/0411
Site Address & Ward	38 Wicks Road, North Ryde East Ward
Zoning	R2 Low Density Residential
Proposal	Torrens Title subdivision to create two lots and construction of a dwelling house on each resulting lot
Property Owners	Sang Min Lee
Applicant	Hall & Hard Homes Pty Ltd
Report Author	Ben Tesoriero Consultant Planner
Lodgement Date	22 November 2019
No. of Submissions	One (1) submission objecting to the development
Cost of Works	\$1,209,756.50
Reason for Referral to LPP	Departure from Development Standard –The proposal results in a 22.3% departure from the minimum subdivision lot size standard prescribed under cl.4.1(3) of RLEP 2014.
Recommendation	Approval (Deferred Commencement)
Attachments	1. Compliance Table Ryde LEP and DCP 2. Draft conditions of consent

ITEM 2 (continued)

	3. Clause 4.6 written request to vary Clause 4.1(3) minimum subdivision lot size 4. Plans submitted with the development application
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1. Executive Summary

The proposal is for a two-lot Torrens Title battle-axe subdivision and the construction of two dwellings and associated civil works, landscaping and tree removal at 38 Wicks Road, North Ryde. Consent is not sought for demolition.

This application is reported to the Ryde Local Planning Panel (RLPP) for determination as it proposes a departure from a development standard in excess of 10% in accordance with the *Environmental Planning and Assessment Act 1979*, Section 9.1 - Directions by the Minister.

Clause 4.1(3) of *Ryde Local Environmental Plan 2014* (RLEP 2014) requires a minimum allotment size of 580m² and Clause 4.1C(3) requires a minimum allotment size of 740m² for a battle axe allotment. The proposed battle-axe allotment (Lot 2) has an area of 858.7m² and meets the 740m² requirement of Clause 4.1C(3) but proposed Lot 1 has an area of 450.4m², resulting in a 129.6m² shortfall. The proposal seeks a 22.3% variation to the minimum 580m² lot size development standard under Clause 4.1(3) of RLEP 2014. The proposed dwellings on each allotment comply with the development standards relating to height and FSR.

The proposal has been supported by a Clause 4.6 written variation request which satisfactorily addresses the jurisdictional prerequisites required to satisfy the consent authority. The variation sought to the standard is considered to be satisfactory.

Given that the proposal is similar to other surrounding residential subdivisions, both the subdivision and associated development will be consistent with the character of the local area, and is mostly consistent with the provisions of Part 3.3 (Dwelling Houses and Dual Occupancy) within *Ryde Development Control Plan 2014* (RDCP 2014).

The application was lodged on 22 November 2019, with owners of surrounding properties being notified from 27 November 2019 until 16 December 2019. In response, one (1) submission was received, which objected to the subject Development Application (DA).

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*. 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.

ITEM 2 (continued)

For the reasons outlined above, the subject DA is recommended for approval, subject to conditions including deferred commencement conditions. The deferred commencement condition relates to vehicular manoeuvring and the provision of a swept path analysis, to ensure vehicles can enter and exit onto Wicks Road (classified road) in a forward direction. The proposal also relies upon the creation of a drainage easement which forms part of the deferred commencement consent.

2. The Site and Locality

The site is legally described as Lot 7 within Deposited Plan 19328 and has a street address of 38 Wicks Road, North Ryde. The site is a rectangular-shaped allotment with a width of 14.325 metres and a depth of 91.44 metres. The front south eastern boundary adjoins Wicks Road (**Figure 1**) and the total site area is 1,309.1m². The site includes a moderate front-to-rear fall across the site of approximately 5.59 metres.



Figure 1: Aerial photograph of the site in context (red border). Also demonstrated in this image is the subdivision pattern of development adjacent to the site, which commonly includes battle-axe allotments akin to that proposed under LDA2019/0411.

The subject site presently contains a single-storey dwelling house (renovated in 2012) and a detached garage within the rear setback adjacent to the north east boundary (**Figure 2**).

Adjoining the site's north eastern side boundary is 40 and 42 Wicks Road). No. 40 Wicks Road is a battle-axe allotment which contains a single-storey multi-dwelling housing development, while No. 42 Wicks Road contains a detached two-storey dwelling house and associated structures (**Figure 3**). Adjoining the site's south western side boundary are 36 and 36A Wicks Road. No. 36 Wicks Road is a battle-axe allotment which contains a detached two-storey dwelling house and associated

ITEM 2 (continued)

structures, while No. 36A Wicks Road contains a two-storey attached dual occupancy (**Figure 4**). The rear boundary adjoins North Ryde Golf Club.



Figure 2: The site as viewed from Wicks Road.
Source: Google, March 2020



Figure 3: 42 Wicks Road, as viewed from the south-eastern side of Wicks Road.
Source: CPS site inspection, 10 January 2020

ITEM 2 (continued)



Figure 4: 36A Wicks Road, as viewed from Wicks Road.
Source: Google, March 2020

The local area consists of a range of different development typologies. The site is located within a row of residential allotments that extends from the intersection of Cox's and Wicks Road, approximately 220 metres to the north east of the site, to a point approximately 240 metres to the south west of the site. Development within this stretch of allotments consists of one-and-two storey dwellings houses, dual occupancies (predominantly attached) and multi-dwelling housing developments. Lots within the north eastern end of this row are considerably deep, and consequently many of those allotments have been consolidated and/or subdivided to create battle-axe allotments. Land to the west and north west is occupied by North Ryde Golf Club, while land to the south east (the opposite side of Wicks Road) encompasses Macquarie Hospital and North Ryde Common.

3. The Proposal

The proposal includes a two (2) lot Torrens title subdivision of the site, one (1) two-storey dwelling on each allotment and associated landscaping and civil works.

Lot 1 presents to Wicks Road and has a site area of 450.4m² and a frontage of 11.325m. The rear allotment (Lot 2) will be a 'battle-axe' allotment with an area of 858.7m² (740m² excluding the access handle); access to this site will be obtained via a three-metre wide access handle adjoining Wicks Road.

Drainage for both proposed allotments will be via an easement adjacent to the north eastern boundary of Lot 2; discharge from the easement will be into the North Ryde Golf Course which adjoins the rear boundary of the site. This arrangement will also require the creation of an easement burdening Lot 2, for the benefit of Lot 1.

ITEM 2 (continued)

The proposed development includes the removal of three trees from the site including Tree 2, 3 and 4 (Gordonia, Chinese Weeping Cypress and Ash Tree).

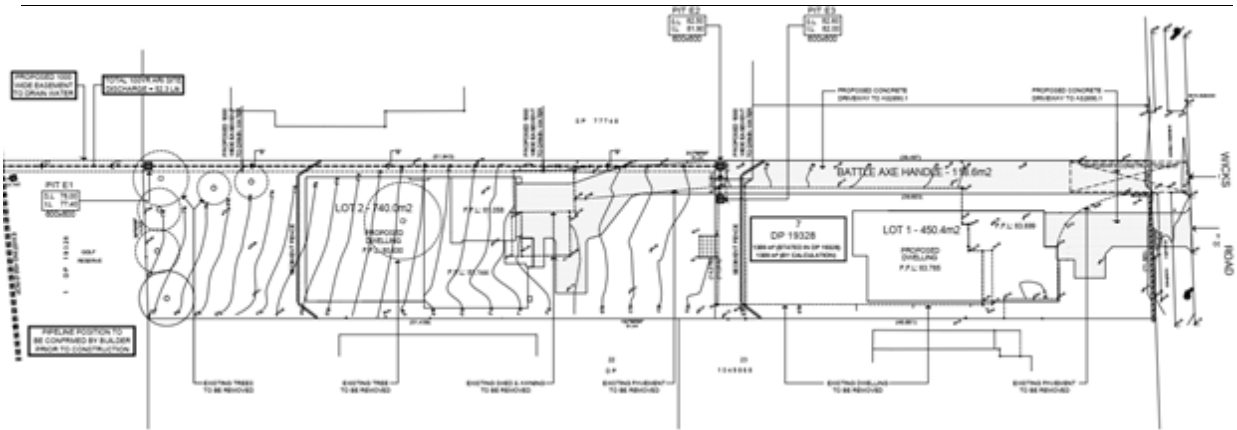


Figure 5: Extract of proposed subdivision plan.
Source: ALW Design, 2020

The layout for each of the dwellings is detailed as follows:

Lot 1:

Ground floor (RL 83.785) (Figure 6)

- Single-vehicle garage and alfresco level with floor levels of RL 83.699.
- Entry is obtained from the front elevation of the dwelling and past a front lounge room. The centre of the ground floor contains a bathroom, laundry, stairwell to the first floor and a central passageway.
- The rear of the dwelling contains an open-plan living area including a kitchen, walk-in pantry, dining and family area.
- A covered alfresco area (floor level RL 83.699) is located to the rear north east side of the dwelling and is accessed from the adjoining family room. The area of the alfresco space is 13.33m².
- There will be a stepdown of approximately 500mm from the alfresco area to the at-grade private open space area, which is located to the rear of the dwelling.

First floor (RL 86.855) (Figure 7)

- The first-floor area contains four bedrooms; the master bedroom at the front of the dwelling includes an ensuite bathroom and Walk-In-Robe (WIR), three bedrooms, bathroom and rumpus room towards the front of the first floor and a linen storage area.

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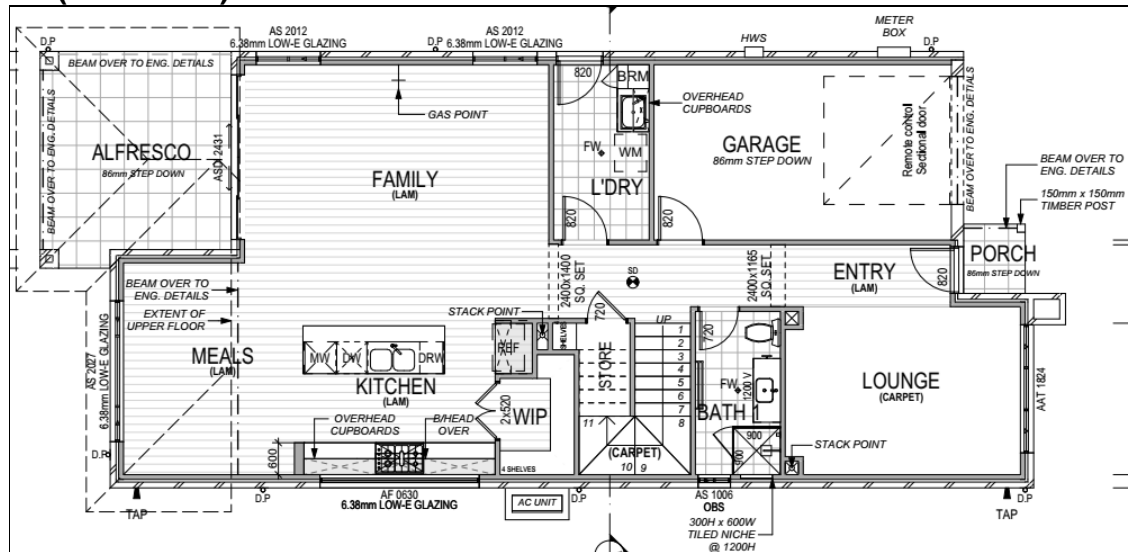


Figure 6: Extract of proposed Lot 1 ground floor.
Source: Hall & Hart Homes, 2020

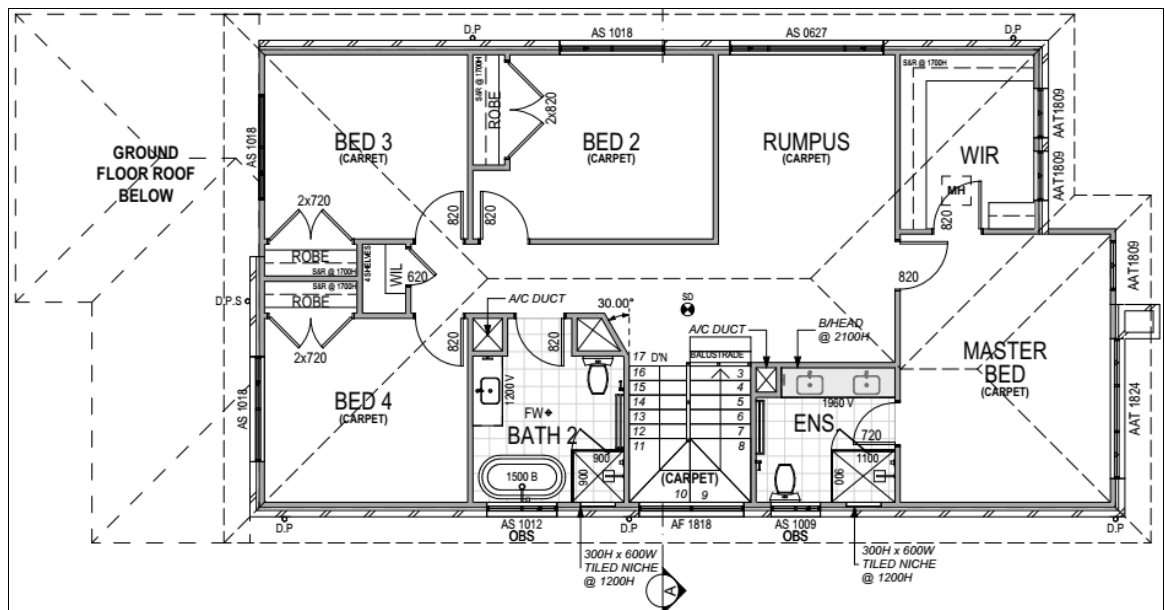


Figure 7: Extract of proposed Lot 1 first floor.
Source: Hall & Hart Homes, 2020

Lot 2:

Ground floor (RL 80.63 and RL 81.144) (Figure 8)

- A double-vehicle garage with a floor level of RL 81.144.
- Entry is obtained from the front elevation of the dwelling and past the garage and a bedroom (containing an ensuite and WIR) at the front of the dwelling. The centre of the ground floor otherwise contains a powder room, storage areas, laundry, stairwell to the first floor and a central passageway.

ITEM 2 (continued)

- The rear of the dwelling contains an open-plan living area including a kitchen, walk-in pantry, dining and family area. A home theatre is also located on the northwest side of the dwelling adjacent to the family area.
- A covered alfresco area (floor level RL 80.544) is located to the rear northeast side of the dwelling and is accessed from the adjoining kitchen, meals and family rooms. The area of the alfresco space is 20.5m².
- There is a stepdown of approximately one metre from the alfresco area to the at-grade private open space area, which is located to the rear of the dwelling.

First floor (RL 84.214) (Figure 9)

- The first-floor area contains five bedrooms; the master bedroom at the front of the dwelling with an ensuite and WIR, while the remaining four bedrooms contain BIRs.
- The remainder of the first floor contains a study nook to the front, and a rumpus room towards the rear, with a linen storage area.

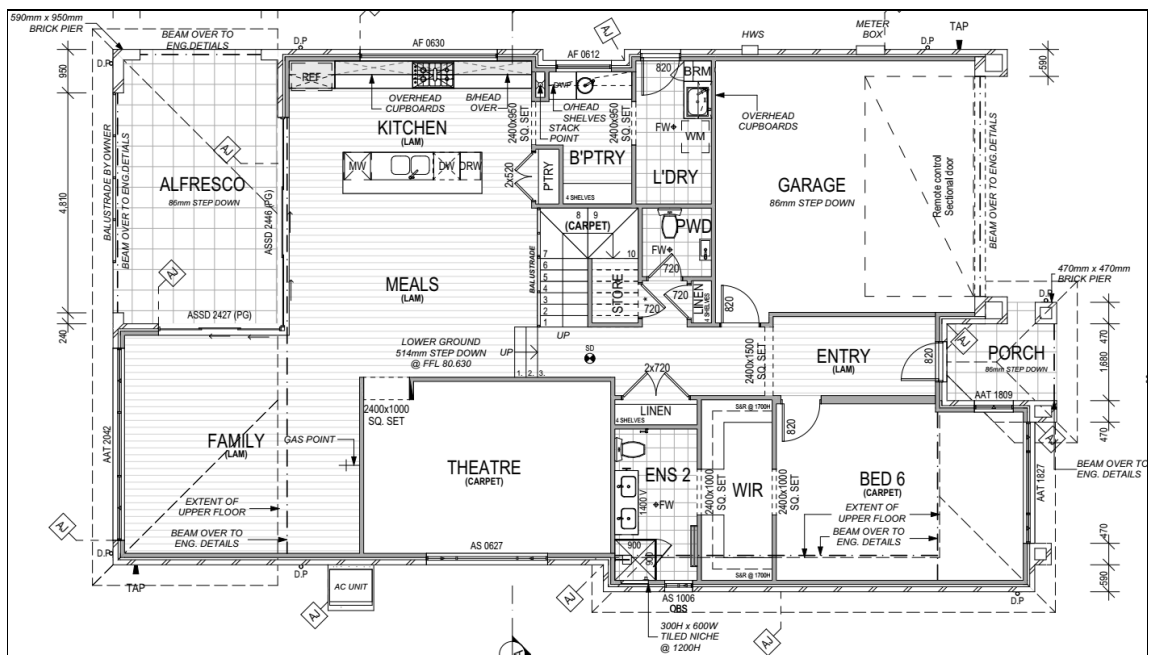


Figure 8: Extract of proposed Lot 2 ground floor.
Source: Hall & Hart Homes, 2020

ITEM 2 (continued)

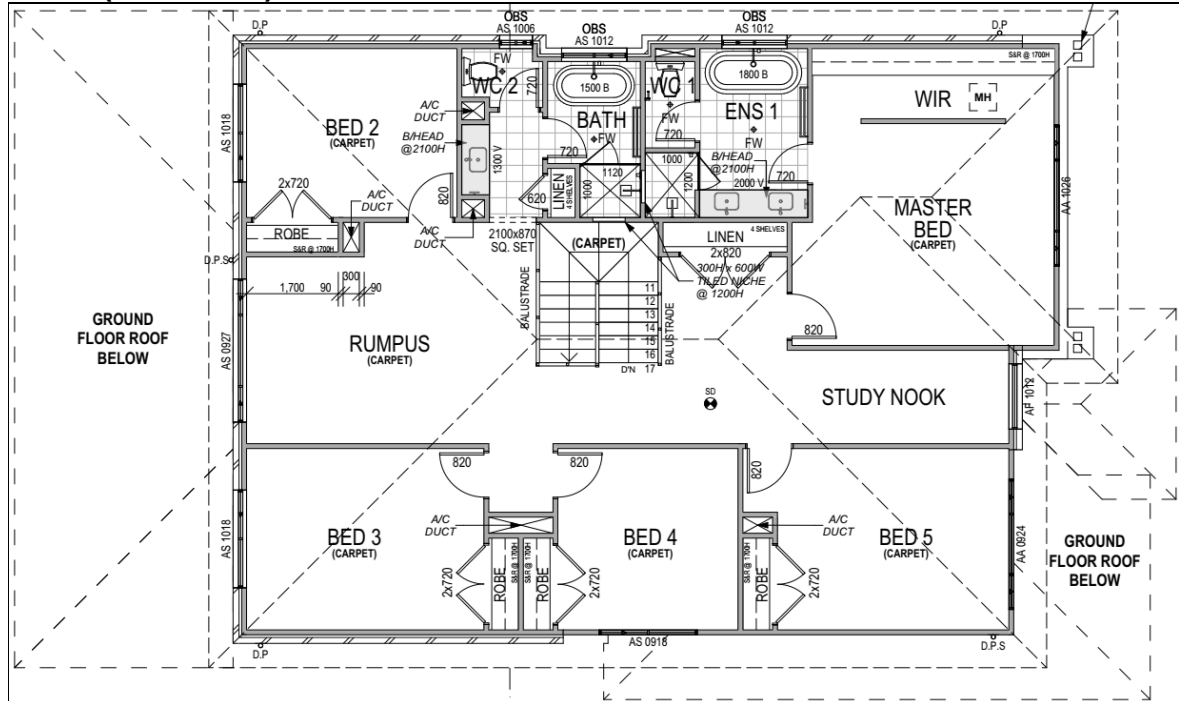


Figure 9: Extract of proposed Lot 2 first floor.
Source: Hall & Hart Homes, 2020

4. Background

Demolition of existing structures was approved by Complying Development Certificate 181144/01, issued by New Home Certification Group on 28 September 2018 (as of 1 June 2020 demolition works had not commenced).

APPLICATION HISTORY

22 November 2019	The subject DA was lodged.
27 November 2019 - 16 December 2019	The DA was notified to the owners of surrounding properties. In response, one (1) submission was received.
13 February 2020	Council sent a request for additional information to the applicant. Issues raised included plan detail inconsistencies, no confirmation regarding drainage easement from North Ryde Golf Course, potential impacts on vegetation from drainage lines, validity of the BASIX Certificates, and vehicle manoeuvring arrangements.
2 March 2020	The applicant submits amended plans and information.
15 April 2020	A request for further information was sent to the applicant relating to the driveway/vehicle manoeuvring arrangements, owners consent

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	from North Ryde Golf Course for the easement, and potential tree impacts from draining lines were unresolved by the applicant's initial amended plans.
25 June 2020	Amended plans and documentation submitted by the applicant, including amended landscape plan, updated owners consent regarding the easement from the North Ryde Golf Course, amended architectural plans, and amended arborist report.
3 July 2020	Further request for additional information sent to the applicant in relation to incorrectly detailed BASIX Certificates.
7 July 2020	Updated BASIX Certificates submitted by the applicant.

5. Planning Assessment
5.1 Objects of the Environmental Planning and Assessment Act 1979

Section 1.3 of the EP & A Act contains the following relevant objects:

1.3 Objects of Act (cf previous s 5)

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (g) to promote good design and amenity of the built environment,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The proposal is for a two lot Torrens title subdivision and construction of two single dwellings. The proposal is reliant upon the creation of a drainage easement and the recommendation is for a deferred commencement consent. The provision of two detached dwellings is not a permissible form of development and therefore the recommended consent includes the registration of the subdivision prior to the issue of a Construction Certificate for the proposed dwellings. The proposed staging of the development consent is to ensure orderly and economic development of land which is consistent with the provisions of the RLEP.

5.2 State Environmental Planning Instruments

ITEM 2 (continued)

State Environmental Planning Policy (Building Sustainability Index BASIX) 2004

The development is identified under the *Environmental Planning and Assessment Regulation 2000* (Regulations) as BASIX Affected Buildings.

Two (2) BASIX Certificates and associated NatHERS certificates were submitted as part of the DA:

- BASIX Certificate No. 964743S_06 dated 7 July 2020 for a single dwelling.
- BASIX Certificate No. 964785S_07 dated 7 July 2020 for a single dwelling.

The BASIX Certificates and associated information have been reviewed and the information contained is deemed to be satisfactory. Conditions in accordance with the Regulations to ensure fulfilment of the BASIX requirements at relevant stages of the development have been included.

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7 of *State Environmental Planning Policy No. 55 – Remediation of land* (SEPP 55) requires Council to consider whether the site is contaminated, and if so whether it is suitable for the proposed development purpose.

The subject site has been historically used for residential purposes. As such, it is unlikely to contain any contamination and further investigation is not warranted in this case.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The Vegetation SEPP commenced on 25 August 2017 and replaced clause 5.9 of RLEP 2014, which related to the preservation of trees and vegetation.

The objective of the Vegetation SEPP is to protect the biodiversity values of trees and other vegetation and to preserve the amenity of the area through the preservation of trees and other vegetation.

The rear of the subject site is mapped as containing significant urban bushland on Council's Environmentally Sensitive Areas map. However, the site does not contain any significant trees. Concern is held regarding the potential impact upon significant trees upon the adjoining site at the North Ryde Golf Course as a result of the proposed stormwater pipe and **Condition 27** is recommended relating to a design modification.

The proposed development includes the removal of three trees from the site including Tree 2, 3 and 4 (Gordonia, Chinese Weeping Cypress and Ash Tree). Tree 2 is located within the building footprint and Trees 3 and 4 whilst not impacted are sought

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to be removed on the landscape plan which has been considered acceptable by Council's Landscape Architect.

The proposal has been supported by a satisfactory arborist report and landscape plan. The proposal does not unduly impact upon any existing biodiversity or trees or vegetation on the site.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The aims of the SREP (deemed SEPP) are as follows:

- (a) *to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained—*
 - (i.) *as an outstanding natural asset, and*
 - (ii.) *as a public asset of national and heritage significance,*
- (b) *for existing and future generations,*
- (c) *to ensure a healthy, sustainable environment on land and water,*
- (d) *to achieve a high quality and ecologically sustainable urban environment,*
- (e) *to ensure a prosperous working harbour and an effective transport corridor,*
- (f) *to encourage a culturally rich and vibrant place for people,*
- (g) *to ensure accessibility to and along Sydney Harbour and its foreshores,*
- (h) *to ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity,*
- (i) *to provide a consolidated, simplified and updated legislative framework for future planning.*

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

5.3 Ryde Local Environmental Plan 2014 (RLEP 2014)

A detailed assessment of applicable development standards is contained within the compliance checklist contained in **Attachment 1**. Outlined below are the following clauses applicable to the proposal.

Clause 2.3 - Zone Objectives and Land Use Table

Under Ryde LEP 2014, the property is zoned R2 Low Density Residential, and the proposed dwellings are permissible with Council's consent. Pursuant to Clause 2.6(1) of the RLEP 2014, the proposed Torrens Title subdivision of the site may occur with development consent.

Objectives for residential zones:

The objectives of the R2 low density residential zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

ITEM 2 (continued)

- *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 is for the provision of new residential dwellings which provide for a variety of housing types and provides for the housing needs of the community within a low density residential environment. The second objective is not of relevance to the proposed development. The proposal has been supported by a satisfactory Clause 4.6 written variation which demonstrates the residential zone objectives are achieved despite the variation to the development standard. The proposed satisfies the relevant objectives for residential developments.

The following table provides a summary of key provisions that apply to the proposal:

Clause	Proposal	Compliance
2.6 – Subdivision requires consent		
Subdivision requires consent	The proposal seeks development consent for subdivision.	Yes
4.1 Minimum subdivision lot sizes		
Minimum required lot size: 580m²	Proposed Lot 1 would have a site area of 450.4m ² , which constitutes a 129.6m ² , or a 22.3% variation to the development standard.	No, 4.6 variation request submitted
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 740 square metres.	Proposed lot area for Lot 2: 740m ²	Yes
(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.	118.7m ² access handle and has been excluded from site areas of proposed allotments.	Yes
4.3(2) Height of Buildings		
9.5m	Proposed building heights: <ul style="list-style-type: none"> • Lot 1: 8.11 metres • Lot 2: 8.83 metres Note: Heights calculated from roof ridge to lowest ground RLs beneath.	Yes
4.4(2) Floor Space Ratio		
0.5:1	Proposed GFA: <ul style="list-style-type: none"> • Lot 1: 202.2m² • Lot 2: 305.4m² Proposed FSR: <ul style="list-style-type: none"> • Lot 1: 0.449:1 • Lot 2: 0.360:1 	Yes

ITEM 2 (continued)

Clause	Proposal	Compliance
	Notes: <ul style="list-style-type: none"> Lot 2 calculations include the access handle. 	
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.	Variation sought to Clause 4.1.	Yes
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.	Proposed earthworks are not significant or of a scale that would likely affect future redevelopment potential of the site nor would it have any foreseeable adverse impacts if addressed by conditions of consent. No objection has been raised by Council's Development Engineer.	Yes
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.	The plans depict sufficient permeable surfaces, OSD and discharge from the site via an easement that is to be created over the adjoining golf course (with Lot 2 also burdened by an easement to drain water from Lot 1). Council's Development Engineer is satisfied with the proposed drainage arrangement.	Yes

Clause 4.6 – Exceptions Clause 4.6 – Exceptions to Development Standards.

The development contravenes Clause 4.1(3) of RLEP 2014, which requires a minimum lot size of 580m². Proposed Lot 1 would have an area of 450.4m², resulting in a 129.6m² short fall to the development standard. The proposal seeks a 22.3% variation to the minimum lot size standard. The proposal has been supported by a written Clause 4.6 request prepared by Hamptons Property Services, dated 27 March 2019 (amended 2 March 2020), to vary the development standard.

An assessment of the relevant provisions of cl.4.6 is as follows.

- Clause 4.6(3)(a) – Is compliance unreasonable or unnecessary in the circumstances of the case?

ITEM 2 (continued)

- Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify the proposed contravention of the development standard?

The variation request provides the reasons why compliance with the standard is unreasonable and/or unnecessary, with selected excerpts shown below:

- *The proposal achieves all other development standards applying to the site, as well as the requirements of the Ryde Development Plan 2014 (RDCP), in particular as it relates to side design, setbacks, landscaped area, site coverage and so forth. Therefore, the proposal demonstrates full consistency with the intended outcomes for the site, despite non-compliance with the standard. The proposal is comprehensive and will improve the environmental conditions of the site, through aspects such as additional landscaping that would not be achieved in absence of supporting this application. Therefore, compliance with the standard is therefore unreasonable and unnecessary and results in a detrimental outcome compared to a development where variation to the lot size is permitted.*
- *Imposing compliance with the development standard serves no purpose when the adjoining parcels of land have already effected the proposed arrangement. While historical in their approval, if anything, approving this application, despite non-compliance with the minimum lot size ensures that the use of this allotment is more closely consistent with the zone objectives, than if it were left in its current form. As such, it is unreasonable to require compliance with this development standard.*
- *“...as demonstrated in the SEE, the proposal:*
 - *Complies with, and is less than, the permitted building height.*
 - *Complies with the maximum permitted FSR on the allotment, and is less than which could be achieved if a single dwelling were proposed.*
 - *Propose an extent of landscaping and deep soil planting that significantly exceeds the required proportion of the allotment and, again, is greater than that which would be provided if the site were redeveloped with a single dwelling house.*
 - *Complies with the required setback distances from front, side and rear boundaries.*

Therefore, but for the allotment size, the proposal does not seek to overdevelop the site as there is no more floor space proposed than that permitted by the development standard and other aspects, such as landscaping and deep soil planting, are over and above the specified requirement. They are also less, and more than, respectively, than if the site were redeveloped with a single dwelling house. By creating this outcome ensures that a dwelling of a domestic scale presents to the streetscape and is not the dominant building form in the vicinity of the site. This can be accommodated on the undersized allotment thus resulting in sufficient grounds to vary the development standard.”

ITEM 2 (continued)

- *“The outcome is, instead, consistent with built form on the adjoining allotments, which have all, similarly undertaken further subdivision of the allotments to create an affordable form of housing. The architectural plans demonstrate that a dwelling can be comfortably achieved that complies with the requirements, without intruding upon the amenity of adjoining properties.”*
- *“The proposal also provides for an opportunity for low density residential development to service local accommodation need, particularly given the site’s proximity to health and medical facilities. It will also result in a material improvement to the natural setting over the current situation with new landscaping treatment that which will not only benefit the site, but will ensure consistency with the pattern of subdivision on the adjoining allotments. Without this variation, such improvements to the natural setting would not be achieved, as sought by both objectives of the development standard and the objectives of the zone.”*
- *“Allowing the variation produces a better environmental and planning outcome by more efficiently utilising this site, which is currently enjoyed by only one household. The outcome will aid the natural qualities of the setting and improve the interface with the adjoining allotments. This outcome will accord with the zone objectives, as well as reinforce the public interest aspect associated with the development.”*

Comment: It is agreed the development outcome will be consistent with the built form of adjoining allotments. As indicated above, the proposed subdivision reflects the progressive subdivision pattern of surrounding land. While the subdivision of surrounding land has not occurred under the current planning provisions, there are several examples of similar-sized lots and/or similar subdivision patterns in the local area. These are shown in the table below:

Address	Lot type	Area (approx.)	Dwelling type
32A Wicks Road	Battle-axe	830m ²	Detached dwelling
34 Wicks Road	Street-fronting	341m ²	Attached dwelling
34A Wicks Road	Battle-axe	738m ²	Detached dwelling
34B Wicks Road	Street-fronting	341m ²	Attached dwelling
36A Wicks Road	Battle-axe	740m ²	Detached dwelling
38 Wicks Road (1)	Street-fronting	450.4m² (proposed)	Detached dwelling
38 Wicks Road (2)	Battle-axe	740m² (proposed)	Detached dwelling
40 Wicks Road	Battle-axe	1608m ²	Multi-dwelling

ITEM 2 (continued)

			housing
42 Wicks Road	Street-fronting	840m ²	Detached dwelling
2/44 Wicks Road	Street-fronting	383m ²	Detached dwelling
3/44 Wicks Road	Battle-axe	717m ²	Detached dwelling
48A Wicks Road	Battle-axe	442m ²	Detached dwelling

It is agreed that permitting the variation will more effectively utilise the site. While other forms of development (a larger dwelling, dual occupancy or multi-dwelling housing) are permissible, given the subject site's width and orientation, such development may be difficult to establish. Aside from the proposed subdivision lot size variation and a non compliant lot width, the proposal otherwise obtains a high level of compliance with applicable development standards and controls.

Further, the layout and design of the proposed development is unlikely to have adverse and unreasonable impacts on surrounding property, would provide a sufficient amount of deep soil space, and will provide good residential amenity and privacy to both proposed dwellings. As such, approval of the variation will enable a better outcome than other potential forms of development on the site.

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 carried out. A response to each of the objectives of the R2 zone is as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

The form of the development (two detached dwellings on separate allotments) is a low-density response that is consistent with development on surrounding sites; notable examples of such similar development patterns (in terms of subdivision layout and/or streetscape presentation) include 30, 30A, 32, 32A, 36, 36A, 42, 50A, and 52 Wicks Road. Further, both dwellings are different sizes (four and six bedrooms), and are capable of providing for community housing needs. The proposal is therefore consistent with the objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal will not affect the capacity of surrounding sites to provide facilities or services meeting the needs of local residents. The proposal is not contrary to this objective.

- *To provide for a variety of housing types.*

ITEM 2 (continued)

As indicated above the proposal is for two detached dwellings containing four and six bedrooms respectively. A variety of housing types are therefore proposed that are consistent with the variety of housing types within the surrounding residential area.

A response to each of the objectives of Clause 4.1 (Minimum subdivision lot size) of RLEP 2014 is as follows:

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

The proposed development will not adversely affect the streetscape character of Wicks Road, as development on proposed Lot 1 is both suitable for the size of the allotment and consistent with existing development on surrounding street-facing allotments. Compliance is therefore achieved with development standards and controls which govern the size, bulk, scale and landscaped area. Further, both the primary living areas and private open space of the dwelling would be oriented towards the rear/north western boundary and separated sufficiently from Lot 2 so as to enable sufficient visual privacy and solar access.

The objective would therefore be satisfied as development on the proposed allotment would retain the local streetscape qualities and neighbouring amenity, in addition to providing expansive private open space areas with high levels of amenity for residents.

(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 proposed development would provide a large private open space at the rear of the site; the lot size will also provide substantial deep soil space to the front and rear of the allotment to enable plantings that support the retention and embellishment of green linkages. The development also proposes greater landscaped and deep soil area than what is otherwise required by Council's controls, thereby helping to satisfy the objective.

Summary

The applicant has adequately addressed why compliance with the development standard is unreasonable or unnecessary under Clause 4.6(3)(a). The applicant has also demonstrated sufficient environmental planning grounds to justify contravention of the minimum lot size standard, as required by and Clause 4.6(3)(b).

The proposed development is consistent with the objectives of the standard and the R2 zone. For this reason, the development will be in the public interest.

ITEM 2 (continued)

Concurrence with the Planning Secretary is not required.

Accordingly, development consent may be granted to the proposal despite the contravened development standard.

5.4 Draft Environmental Planning Instruments

Draft Remediation of Land State Environmental Planning Policy

The Draft SEPP is a relevant matter for consideration as it is an environmental planning instrument that has been placed on exhibition. The explanation of Intended Effects accompanying the draft SEPP advises:

As part of the review of SEPP 55, preliminary stakeholder consultation was undertaken with Councils and industry. A key finding of this preliminary consultation was that although the provisions of SEPP 55 are generally effective, greater clarity is required on the circumstances when development consent is required for remediation work.

The draft SEPP does not seek to change the requirement for consent authorities to consider land contamination in the assessment of DAs. As discussed within the SEPP 55 assessment above, the subject site has been used for residential purposes for an extended period of time, and is therefore unlikely to have been associated with land uses that would result in contamination of the site. The site is therefore suitable for the development, and further investigation is not warranted in this instance.

Draft Environment SEPP

The draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. The consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways and urban bushland areas. Changes proposed include consolidating SEPPs, which include:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposal is not inconsistent with the provisions of the draft SEPP.

5.5 Ryde Development Control Plan 2014 (RDCP 2014)

The proposal is subject to the provisions of the following parts of RDCP 2014:

- Part 3.3: Dwelling Houses and Dual Occupancy (Attached);
- Part 7.2: Waste Minimisation and Management;
- Part 8.1: Construction Activities;
- Part 8.2: Stormwater & Floodplain Management;

ITEM 2 (continued)

- Part 8.3: Driveways;

The development is subject to the provisions of Part 3.3 – Dwelling Houses and Dual Occupancy under the RDCP 2014. A full assessment of the proposal under DCP 2014 is illustrated in the compliance table at **Attachment 1**.

The provisions of DCP 2014 have been considered in this assessment and it is concluded that the proposed is consistent with the aims and objectives of RDCP 2014. Where strict compliance has not been achieved, in accordance with Section 4.15 (3A)(b) flexibility has been sought to allow a reasonable alternative solution that achieves the objects the standard. These matters are discussed below:

Part 3.3: Dwelling Houses and Dual Occupancy (Attached)

Section 2.4 - Subdivision

The proposal seeks to vary two development controls within Section 2.4 a. (Subdivision) of Part 3.3 of the RDCP 2014, specifically:

- That all allotments (other than battle-axe allotments) have an area of at least 580m² (Control i), and
- That all allotments (other than battle-axe allotments) have a width of not less than 15 metres at a distance of 7.5 metres from the front boundary (Control iii).

Proposed Lot 2 complies with Control ii (which requires a frontage of at least 10 metres); the proposal also complies with controls under Section 2.4 that relate to battle-axe allotments.

Proposed Lot 1 has a width of 11.325 metres and area of 450.4m². The variation to the site area has been discussed under the Clause 4.6 variation to Clause 4.1(3) and is considered acceptable. The reduced width is not considered to be an impediment to a compliant form of development. The proposed dwelling fully complies with the minimum setback and landscaping/deep soil area requirements, and the design/layout of the proposed dwelling would not be unreasonably constrained, and achieves high levels of internal amenity.

Further, the landscaped areas towards the rear of each allotment would provide sufficient open space that would enable green linkages and corridors within residential-zoned areas. The reduced width of Lot 1 is therefore considered acceptable.

Section 2.6.2 – Topography and Excavation

The proposal would technically comply with cut and filling requirements, as the levels of excavation and filling (both within and outside the proposed building footprints) would be within RDCP 2014 requirements. The plans however indicate that both dwellings would be placed on 'waffle-pod' slabs, and that the north eastern rear

ITEM 2 (continued)

corner of the dwelling on Lot 2 (alfresco area) would be significantly elevated 1140mm above ground level (**Figure 10**). Whilst the area under the rear of this dwelling would not technically be 'filled', it would present the appearance of a structure that is built above natural ground level and the existing landform of the site.

The issue would arise from the location of the dwelling footprint on Lot 2, which is situated on a steeper part of the site. The footprint of this dwelling is proposed to be stepped in order to minimise excessively large amounts of filling and/or elevation of the rear of the dwelling, however to prevent a significant stepdown between internal living areas and the alfresco area (the principal private open space area), the floor level between these areas has been largely retained (albeit with an 86mm stepdown) which contributes to the aforementioned elevation of the alfresco area.

The relevant objectives of the controls would be satisfied, in that the proposed development has for the most part retained ground levels and landform and would minimise the extent of excavation and fill; as the issue is at the rear of the site, there would be no impact on streetscape.

ITEM 2 (continued)

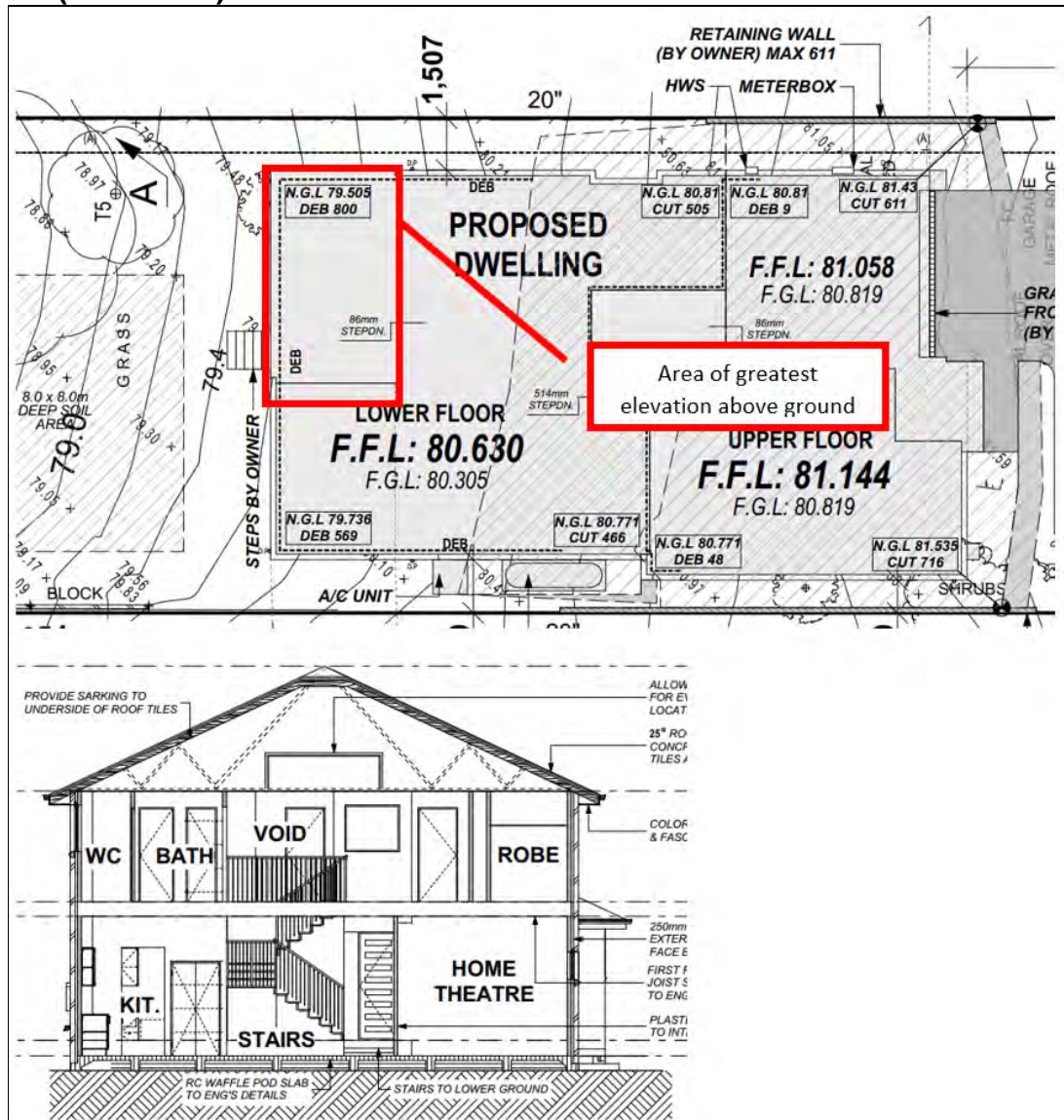


Figure 10 – The north-western corner of the dwelling which is elevated.

Source: Hall & Hart Homes, 2020

Concern has been raised in the submission that the orientation and elevation of the alfresco area would result in adverse visual privacy impacts on the adjoining site to the north east at 40 Wicks Road. It is therefore recommended **Condition 1(a)** which requires provision of a privacy screen along the north eastern elevation of the alfresco area. This would mitigate likely visual privacy concerns and would subsequently satisfy the final objective of the control under Section 2.6.2 of RDGP 2014.

With regard to the above, the elevation of the alfresco area is therefore considered to be satisfactory.

Section 2.9.2 – Side Setback

ITEM 2 (continued)

Control (b) requires 1.5 metre side setbacks for two storey dwellings. The proposed dwelling on Lot 1 is compliant with this requirement. However, the proposed dwelling on Lot 2 is set back 950mm from the south western side boundary (Figure 11) and does not comply. The proposal is considered acceptable for the following reasons:

- The extent of non-compliance along the south western elevation is for a length of 7.38 metres. The remainder of the elevation provides for a 1.504 metre setback and complies.
- The non compliance occurs at ground floor with the first floor complying with the required setback.
- The rear of the dwelling where it is elevated achieves a compliant side setback.
- The elevation contains a single window associated with the ensuite and does not result in any adverse privacy impact upon the adjoining dwelling at 36A Wicks Road.
- The non compliant setback does not result in any unacceptable overshadowing to the adjoining dwelling.

On this basis, the minor variation is acceptable.

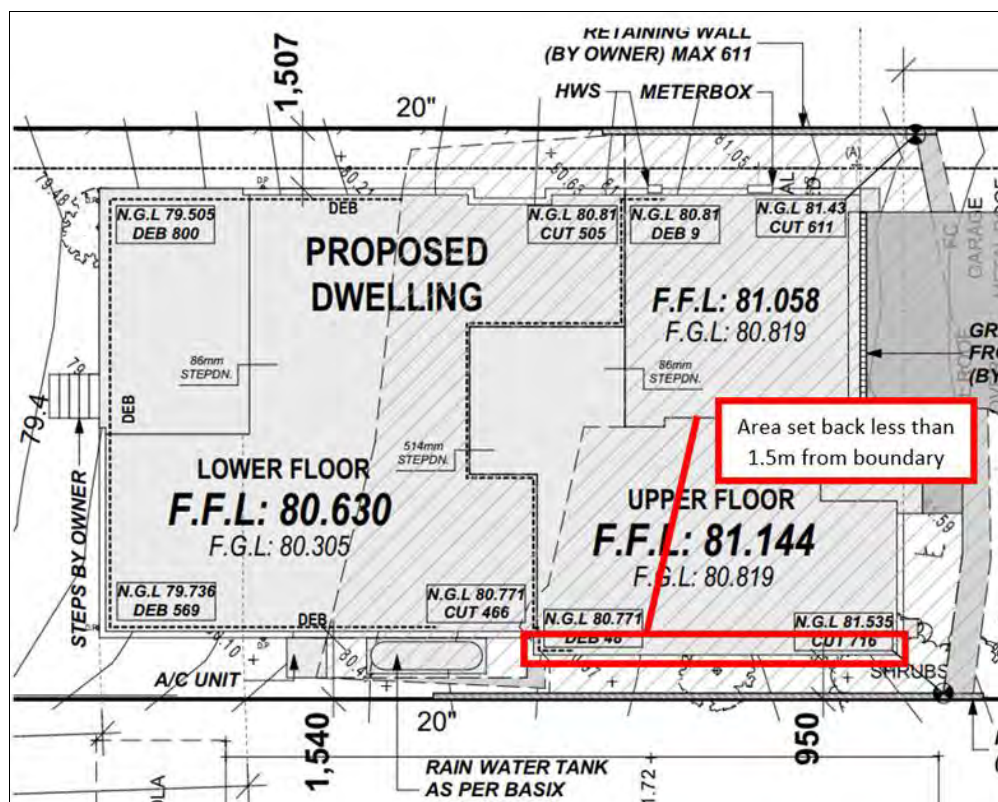


Figure 11 – The proposed side setback of 950mm from south-western side boundary
Source: Hart & Home 2020

Section 2.14.2 - Visual Privacy

ITEM 2 (continued)

Control (a) requires that the design orient windows of living areas, balconies and outdoor living areas to the front and rear of dwelling. Each proposed dwelling requires further privacy mitigation measures as discussed individually below.

Lot 1:

The proposal contains a first floor window associated with the internal stair case within the south western elevation. The siting of this window aligns with the siting of the first floor bedroom windows of 36 Wicks Road. **Condition 1(b)** is recommended requiring the window to be obscured to ensure the privacy between dwellings is maintained.

Lot 2:

Concern has been raised by the adjoining property at 40 Wicks Road regarding a privacy impact from the proposed dwelling. The north eastern elevation contains ground floor openings associated with the laundry, pantry, kitchen and the alfresco is sited in the north-eastern corner of the dwelling. The windows associated with the pantry and kitchen has a sill height of 900mm and do not result in any adverse impact on privacy (**Figure 12**). **Condition 1(a)** is recommended requiring the provision of a privacy screen along the north eastern elevation of the alfresco.



Figure 12 North-eastern elevation of proposed dwelling on Lot 2
Source: Hart & Home 2020

At first floor, the windows are associated with ensuite 1 and the bathroom. These windows are identified as being obscure glazing and do not result in any adverse privacy impact.

5.6 Planning agreements or draft planning agreements

ITEM 2 (continued)

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

5.7 Section 7.11 Development Contributions Plan 2020

Council's current Section 7.11 Development Contributions Plan 2020 effective 1 July 2020 requires a contribution for the provision of various additional services required as a result of increased development density. The contribution is based on the number of additional dwellings there are in the development proposal. The contribution that are payable with respect to the increase housing density on the subject site (being for residential development outside the Macquarie Park Area) are as follows:

A – Contribution Type	B – Contribution Amount
Community & Cultural Facilities	\$6,061.80
Open Space & Recreation Facilities	\$10,438.15
Transport facilities	\$3,204.48
Plan Administration	\$295.57
The total contribution is	\$20,000.00

Condition 25 is recommended requiring the payment of the Section 7.11 fee prior to the issue of the Subdivision Certificate.

5.8 Any matters prescribed by the regulations

Environmental Planning and Assessment Regulation 2000

The Regulation underpins the day-to-day operation of the NSW planning system. The Regulation guides the processes, plans, public consultation, impact assessment and decisions made by local councils, the Department of Planning and others. Standard conditions are recommended relating to compliance with BCA and AS.

Building Code of Australia Upgrade – Clauses 93 and 94

In accordance with Clause 93 and 94 of the Regulations 2000, the proposal will be required to provide adequate fire safety in accordance with the BCA. This will be included in the recommendations of this report.

6. The likely impacts of the development

ITEM 2 (continued)

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 DCP 2014). The proposal seeks variation to the development standard Clause 4.1 relating to minimum allotment size. The proposal has been supported by a satisfactory Clause 4.6 variation and demonstrates the proposal does not result in any adverse impacts despite the variation.

Subject to conditions, the proposal is unlikely to result in any adverse impacts on the streetscape, the character of the local area or surrounding allotments. The development will not result in any significant or adverse visual privacy or overshadowing impacts on adjoining sites, and the visual appearance of the development from the public domain would be consistent with surrounding sites.

Noting the fragmented subdivision pattern of Wicks Road to the southwest of Cox's Road (which includes lots that are smaller than what is permitted by the current RLEP 2014 provisions), approval of the proposed development in this specific instance is unlikely to establish a negative precedent that would be reflected elsewhere. The development is considered satisfactory in terms of environmental impacts.

7. Suitability of the site for the development

The site is within an R2 Low Density Residential zone. The proposal is for the subdivision of an existing allotment and associated residential development and civil works. While the proposal does not meet the minimum lot area and width requirements for Lot 1, it seeks an appropriate intensification of the site that otherwise satisfies relevant planning requirements including landscaped/deep soil area and private open space areas. The submitted cl.4.6 variation is considered to meet the jurisdictional prerequisites to enable the consent authority to support the proposed departure from the development standard. The proposed development is therefore suitable for the site.

8. 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 a variation to a development standard, the submitted cl.4.6 establishes satisfactory environmental planning grounds for the variation, and approval of the variation is consistent with the objectives of the lot area development standard and the R2 zone. Further, the proposal is consistent with other relevant

ITEM 2 (continued)

planning provisions, would not significantly or unreasonably affect surrounding sites, and is consistent with the existing and desired future character of the local area.

The proposal would therefore be in the public interest.

9. Submissions

In accordance with the Ryde Community Participation Plan, owners of surrounding properties were notified from 27 November 2019 until 16 December 2019. In response, one (1) submission was received from the owner of Unit 1, 40 Wicks Road, which objected to the subject Development Application (DA).

- A. *The request to join into our Storm water pipes, Pit and Easement has not been granted by Body Corporate and owner of 1/40 Wicks Rd. The Body Corporate have already advised the LSB Lawyers about this situation. Although when these plans were viewed today at Council the Storm Management Plan was still indicating shared access with no alternate proposal. Therefore, we request to view alternate plan for the storm water management of Lot 1&2 prior to development approval*

Comment: The original assessment of the proposal identified that the stormwater plans depicted drainage via an easement on the adjoining site at 40 Wicks Road, however consent had not been obtained from the owners of that land to do so. Subsequent revisions to the stormwater plans depict that stormwater is proposed to discharge from the OSD systems to an easement to be created within North Ryde Golf Course. Landowner's consent (signed by the course's General Manager) has been obtained by the applicant and submitted with amended plans. Such an arrangement has been reviewed by Council's Development Engineer, who confirmed that this arrangement is satisfactory, subject to recommended conditions.

- B. *The dwelling on Lot 2 in particular the alfresco at the rear of the property is directly looking over and into two Bedrooms and a Bathroom of the adjoining property at 1/40 Wicks Rd. We would request that a fixed privacy screen be installed floor to ceiling on the alfresco area on the northern side of the new property on lot 2.*

Comment: **Condition 1(a)** is recommended which requires the provision of a privacy screen along the north eastern elevation of the alfresco area associated with the dwelling on Lot 2.

- C. *Disturbing impact of lighting*

ITEM 2 (continued)

- *The fixed windows in the kitchen, butler's pantry and laundry door will be overlooking our adjoining property resulting increased interference from light at night and reduced privacy.*
- *We request that these windows and the door have an opaque finish to reduce this impact. The First-Floor plan shows Bathroom, Ensuite and W.C. windows on the northern side of the property that at night would produce an undesirable light source shining directly into the Bedrooms. We request the installation of external Privacy Screens be fitted to these windows to reduce this hazard.*

Comment: The proposed dwelling on Lot 2 within the north eastern elevation contains ground floor openings associated with the laundry, pantry, kitchen and the alfresco is sited in the north-eastern corner of the dwelling. The proposed heights of the sills and tops of the two windows are respectively 900mm and 1.52 metres above the level of the ground floor (RL 80.63). The window's lintel height is below a sight line and does not result in any adverse privacy impact. Given the laundry door's placement with regard to the levels of the site, all but the top 640mm of the door would be screened by a 1.8 metre high boundary fence.

At first floor, the windows are associated with ensuite 1 and the bathroom. These windows are identified as being obscure glazing and do not result in any adverse privacy impact.

The lighting associated with the proposed dwelling would not be uncharacteristic of a low density residential area and does not result in any adverse amenity impact. Given the limited nature of use of internal lighting it is not considered unreasonable.

10. Referrals**INTERNAL REFERRALS****Senior Development Engineer****STAGE 1 – SUBDIVISION****Drainage Easement**

The Applicant has provided Owner's consent from the golf course in regards to the easement. The registration of this easement is to be completed prior to the issue of any development consent, which can be dealt with via a deferred commencement condition.

STAGE 2 – CONSTRUCTION OF SINGLE DWELLINGS

ITEM 2 (continued)

Stormwater Management

Council's Landscape Architect has raised concerns in regards to potential impacts on the existing trees due to the proposed stormwater system line. As a result, the plan is to be amended to comply with the requirements of the condition of consent labelled Amended Stormwater Plan.

Vehicle Access and Parking

The amended architectural plans depict Lot 1 to provide only one off-street parking space. Taking into consideration the site fronts a State Road with no on-street parking and the concern that the building setback provides sufficient space to accommodate a second vehicle, there is a concern this area will be utilised as a secondary space which will result in reversing onto Wicks Road which should be prevented. Council's Planner has advised the arrangement is considered satisfactory as the plans do not depict a secondary space.

The plans include a permeable driveway adjacent to the hardstand area, although it doesn't appear sufficient to enable forward entry and exit within 3 manoeuvres. Swept paths demonstrating compliance were previously requested, although were not provided. As a result, a deferred commencement condition is required to address this matter.

Recommendation

There are no objections to the proposed development with respect to the engineering components, subject to the application of the following conditions being applied to any development consent being issued for the proposed development.

Planner's Comment: Part 9.2 of RDCP 2014 requires up to two parking spaces for a dwelling house; the provision of only one space for Lot 1 is therefore compliant. Pursuant to s.4.15(3A) of the *Environmental Planning and Assessment Act 1979*, if a development complies with the provisions of a development control plan, then the consent authority is not to require more onerous standards with respect to that aspect of the development.

Furthermore, Part 3.3 of RDCP 2014 requires a 6 metre front setback and an additional 1m setback to garages, and there is therefore no opportunity to reduce the length of the driveway.

However, it is agreed that the deferred commencement condition relating to vehicular manoeuvring and the provision of a swept path analysis is required. This will help ensure vehicles from Lot 1 can enter and exit onto Wicks Road (classified road) in a forward direction.

Landscape Architect

ITEM 2 (continued)

As part of the assessment of the subject DA, the proposal along with the subsequent amended plans and arborist reports, has been referred to Council's Landscape Architect for comment. In their latest referral response dated 12 July 2020, support for the proposed development subject to consent conditions has been provided.

Condition 27 requires the submission of an amended stormwater plans prior to the issue to construction certificate in order to better protect to ensure the retention of significant trees (Trees 6, 8 & 9 Swamp Oak, Coastal Myall and Yellow Box) located on the adjoining property at the North Ryde Golf Course, that would be impacted upon by the applicant's proposed stormwater drainage lines. The proposed condition has been reviewed by Council's Development Engineer and is supported.

The proposal also includes the removal of Tree 2 (Gordonia) which is sited within the building footprint of Lot 2. The submitted landscape plan additionally shows the removal of Tree 3 and 4 (Chinese Weeping Cypress and Ash Tree) (**Figure 13**). The proposed removal is necessary to accommodate the proposed underbore stormwater pipe to the North Ryde Golf Course. Compensatory tree planting or two local Australian native trees with a minimum pot size of 45 litres has been recommended by way of consent conditions.

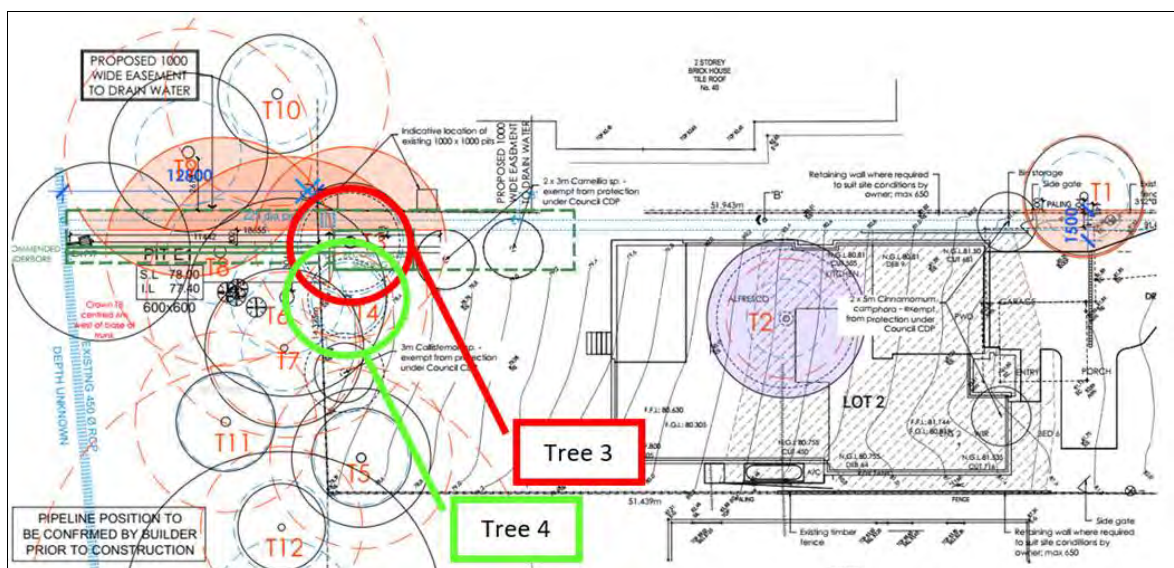


Figure 13 Tree 3 and 4 proposed for removal Source: Hart & Home 2020

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:

ITEM 2 (continued)

- The proposed subdivision is consistent with the objectives of the relevant provisions of the RLEP 2014 and RDCP 2014, with minimal environmental impacts.
- The proposal has been supported by a satisfactory Clause 4.6 written variation request which demonstrates that compliance with the Clause 4.1 minimum subdivision lot size development standard is unreasonable or unnecessary in the circumstances of this specific proposal. The Clause 4.6 written variation request also demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard.
- Issues raised in the submission received in response to this application have been considered and addressed in the report. None of the issues raised warrant the refusal of the subject DA.
- The proposed subdivision and associated development are consistent with the approved development of the local area and will have minimal impact to adjoining properties.
- The site is suitable for the proposed development, which is also in the public interest.

12. Recommendation

That the Ryde Local Planning Panel, as the consent authority, grant deferred commencement consent to LDA2019/411 for the Torrens Title subdivision to create two lots and construction of a dwelling house on each resulting lot, civil works and associated landscaping works on land known as 38 Wicks Road, North Ryde subject to the recommended conditions in **Attachment 2**.

ATTACHMENTS

- 1 Compliance Table
- 2 Draft Deferred Commencement Conditions of Consent
- 3 Clause 4.6 - Minimum Allotment Size
- 4 A3 Plans - subject to copyright provisions

ITEM 2 (continued)

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Report Approved By:

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Senior Coordinator - Assessment**

**Sandra Bailey
Manager - Development Assessment**

**Liz Coad
Director - City Planning and Environment**

ITEM 2 (continued)

ATTACHMENT 1

Compliance Check - Quality Certification

Assessment of a two lot subdivision and construction of 2 x single dwellings and ancillary development.

LDA No: LDA2019/411	Date Plans: 18.06.2020 and
Address: 38 Wicks Road, North Ryde	
Proposal: Torrens title subdivision to create two lots and construction of a dwelling house on each resulting lot.	
Constraints Identified: Urban bushland	

COMPLIANCE CHECK

Clause	Proposal	Compliance
2.6 – Subdivision requires consent		
Subdivision requires consent	The proposal seeks development consent for subdivision.	Yes
4.1 Minimum subdivision lot sizes		
Minimum required lot size: 580m ²	Proposed Lot 1 would have a site area of 450.4m ² , which constitutes a 129.6m ² , or a 22.3% variation to the development standard.	No, 4.6 variation request submitted
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 740 square metres.	Proposed lot area for Lot 2: 740m ²	Yes
(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.	118.7m ² access handle and has been excluded from site areas of proposed allotments.	Yes
4.3(2) Height of Buildings		
9.5m	Proposed building heights: <ul style="list-style-type: none"> Lot 1: 8.11 metres Lot 2: 8.83 metres Note: Heights calculated from roof ridge to lowest ground	Yes

ITEM 2 (continued)

ATTACHMENT 1

Clause	Proposal	Compliance
	RLs beneath.	
4.4(2) Floor Space Ratio		
0.5:1	<p>Proposed GFA:</p> <ul style="list-style-type: none"> Lot 1: 202.2m² Lot 2: 305.4m² <p>Proposed FSR:</p> <ul style="list-style-type: none"> Lot 1: 0.449:1 Lot 2: 0.360:1 Site: 0.388:1 <p>Notes:</p> <ul style="list-style-type: none"> Lot 2 calculations include the access handle. FSR calculations rounded to three decimal places. 	Yes
4.6 Exceptions to development standards		
<p>(1) The objectives of this clause are as follows—</p> <p>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,</p> <p>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p>	Variation sought to Clause 4.1.	Yes
5.10 Heritage Conservation		
<p>(1) The objectives of this clause are as follows—</p> <p>(a) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</p> <p>(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, setting and views,</p> <p>(c) To conserve archaeological sites,</p> <p>(d) to conserve Aboriginal objects and Aboriginal places of heritage significance</p>	The site does not contain a heritage item and is not within an HCA. The nearest two heritage items are at 16 Wicks Road (Item 172; single dwelling located approximately 180m to the south-west) and 60 and 62 Wicks Road (Item 173; a pair of semi-detached dwellings located approximately 190m to the north-east). The site is unlikely to contain items of indigenous heritage given its developed state, however the potential discovery of such items during works can be	Yes

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	addressed via conditions.	
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.	Proposed earthworks are not significant or of a scale that would likely affect future redevelopment potential of the site nor would it have any foreseeable adverse impacts if addressed by conditions of consent. No objection has been raised by Council's Development Engineer. The source of any fill and/or the destination of any excavated materials would be addressed by conditions of consent.	Yes
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.	The plans depict sufficient permeable surfaces, OSD and discharge from the site via an easement that is to be created over the adjoining golf course (with Lot 2 also burdened by an easement to drain water from Lot 1). Council's Development Engineer is satisfied with the proposed drainage arrangement.	Yes

DCP 2014	Proposed	Compliance
Part 3.3 - Dwelling Houses and Dual Occupancy (attached)		
Section 1.0 Introduction		
Part 1.6 Site Analysis		
Site analysis to be submitted.	Drawing prepared by Hart & Home	Yes
Section 2.0 General Controls		
2.1 Desired Future Character		
Development is to be consistent with the desired future character of the low density residential areas.	The proposed development is consistent with the desired future character of low-density residential areas within the surrounding locality. The typology and design of the proposed dwellings are consistent with development on surrounding allotments (particularly 36 and 36A Wicks Road). Refer to assessments below and the assessment	Yes

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	report for further information.	
2.2 Dwelling Houses		
(a) Landscape setting which includes significant deep soil areas at the front and rear (b) Maximum two storeys high (c) Dwellings address the street (d) Boundary between public and private space is clearly articulated (e) Garages and carports are not to be visually prominent features (f) Dwellings are to respond appropriately to the site analysis	<p>Front and rear setbacks are to contain predominantly landscaped areas with significant deep soil areas</p> <p>Both dwellings two storeys in scale.</p> <p>Lot 1 presents to the streetscape.</p> <p>The garage on Lot 1 would be a single vehicle garage; this feature would be located behind the front building line and its width would be limited to less than 40% of the total frontage of the dwelling. The Lot 2 garage would only be partly visible from Wicks Road along the access handle, and would not be a visually prominent structure from the public domain.</p>	Yes
2.4 Subdivision		
Minimum lot sizes apply under RLEP Clause 4.1A	<p>Lot 1:</p> <ul style="list-style-type: none"> Proposed lot area: 450.4m² 11.3m road frontage 11.3m maximum lot width <p>Refer to the planning assessment for a discussion of these variations.</p> <p>Lot 2:</p> <ul style="list-style-type: none"> Proposed lot area: 740m² 3m road frontage 3m wide access corridor 	No
2.5 Public Domain Amenity		
2.5.1 Streetscape		
(a) Site design, building setbacks and level changes respect the existing topography (b) Front gardens to complement	<p>Lot 1 presents to Wicks Road.</p> <p>Single storey access porch for</p>	Yes

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and enhance streetscape character (c) Dwelling design is to enhance the safety and amenity of the streetscape (d) Carports and garages visible from the public street are to: (i) Be compatible with the building design (ii) Be setback behind the dwelling's front elevation (e) Driveways and hard stand areas are to be minimised . (f) Dwellings, garages and carports are to be orientated to match the prevailing orientation of such buildings in the streetscape (g) Facades from the public domain are to be well designed.	dwg on Lot 1 The primary facades of both dwellings would be articulated.	
2.5.2 Public Views and Vistas		
(a) A view corridor is to be provided along at least one side allotment boundary where there is an existing or potential view to the water from the street. Landscaping is not to restrict views. Fence 70% open where height is >900mm. (b) Garages/carports and outbuildings are not to be located within view corridor if they obstruct view.	No significant views are obtainable from the subject site or adjoining sites.	Yes
2.5.2 Pedestrian & Vehicle Safety		
(a) Car parking located to accommodate sightlines to footpath & road in accordance with relevant Australian Standard. (b) Fencing that blocks sight lines is to be splayed. (c) Refer to relevant AS when designed driveways	The garages are setback sufficiently to enable appropriate sight lines. Fencing does not block sight lines.	Yes
2.6 Site Configuration		
2.6.1 Deep Soil Areas		
(a) 35% of site area min. (b) Deep soil area must include: (i) Min 8x8m deep soil area in backyard. (ii) Front garden area to be completely permeable (exception driveway, pedestrian path and garden walls). (c) Dual occupancies need only one 8m x 8m in back yard	Proposed deep soil areas: <ul style="list-style-type: none"> Lot 1: 164.6m², or 36.1% Lot 2: 284.9m², or 38.55% Note: Above calculations exclude areas occupied by onsite stormwater infrastructure and the pervious vehicular	Yes

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<p>(d) Deep soil areas to have soft landscaping</p> <p>(e) Deep soil areas to be 100% permeable. Not covered by structures, paving or the like, or have below surface structures such as stormwater detention elements.</p>	<p>manoeuvring area within the front setback of Lot 1.</p> <p>8m x 8m deep soil area provided for each allotment.</p> <p>The front setback area of both allotments would contain landscaped areas except for where vehicular and pedestrian access and vehicular manoeuvring is proposed.</p>	
2.6.2 Topography & Excavation		
<p>(a) Building form and siting relates to the original topography of the land and of the streetscape.</p> <p>(b) The area under the building footprint may be excavated or filled so long as:</p> <p>(i) the topography of the site requires cut and/or fill in order to reasonably accommodate a dwelling</p> <p>(ii) the depth of excavation is limited to 1.2m maximum</p> <p>(iii) the maximum height of fill is 900mm</p> <p>(c) Areas outside the dwelling footprint may be excavation and/or filled so long as:</p> <p>(i) the maximum height of retaining walls is not >900mm</p> <p>(ii) the depth of excavation is not >900mm</p> <p>(iii) the height of fill is not >500mm</p> <p>(iv) the excavation and filled areas do not have an adverse impact on the privacy of neighbours</p> <p>(v) the filled areas do not have an adverse impact on the privacy of neighbours</p> <p>(vi) the area between the adjacent side wall of the house and the side boundary is not filled</p> <p>(vii) the filled areas are not adjacent to side or rear boundaries</p> <p>(d) Fill is not allowed in areas of overland flow. Refer to Part 8.2 stormwater management</p> <p>(e) Generally the existing topography is to be retained.</p>	<p>Max cut: Lot 1: Approx. 220mm (southeast corner of dwelling) Lot 2: Approx. 709mm (centre of front building line)</p> <p>Max fill (no fill, but partly elevated): Lot 1: Approx. 545mm (northwest corner of dwelling) Lot 2: Approx. 1,140mm (northeast corner of dwelling)</p> <p>Max cut: Lot 1: Approx. 190mm (adjacent to southwest corner of the dwelling) Lot 2: Approx. 800mm (adjacent to southwest corner of the dwelling)</p> <p>Max fill: Lot 1: None Lot 2: Approx. 100m (within the southwest side setback)</p> <p>No fill proposed.</p> <p>Site is not affected by overland flow.</p>	<p>Yes</p>

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	Maximum retaining wall height of 800mm	
2.7 Floor Space Ratio (FSR)		
(a) FSR is 0.5:1 in accordance Clause 4.4 (b) A floor area of 36m ² maybe excluded when this area accommodates 2 car space. An area of 18m ² may be excluded when the area accommodates 1 parking space.	<ul style="list-style-type: none"> Lot 1: 0.449:1 Lot 2: 0.360:1 	Yes
2.8 Height		
2.8.1 Building height		
(a) Building heights are to be as follows: - Maximum height of 9.5 metres for dwellings and dual occupancy. - Outbuildings including garages and carports maximum height 4.5 metres.	Maximum two storeys <ul style="list-style-type: none"> Lot 1: 8.11 metres Lot 2: 8.83 metres 	Yes
<u>Maximum wall plate</u> - 7.5m max above FGL or - 8m max to top of parapet <i>NB:</i> <i>TOW = Top of Wall</i> <i>EGL = Existing Ground Level</i> - <i>FGL = Finished Ground Level</i>	Maximum wall plate heights: - Lot 1: 5.66m (northeast elevation) - Lot 2: 6.31m (northeast elevation)	Yes
<u>Maximum number of storeys:</u> - 2 storeys maximum (storey incl basement elevated greater than 1.2m above EGL). - 1 storey maximum above attached garage incl semi-basement or at-grade garages	Maximum two storeys.	Yes
2.8.2 Ceiling Height		
(a) Habitable rooms to have 2.4m floor to ceiling height (min).	2.45m minimum room height.	Yes
2.9 Setbacks		
2.9.1 Front setbacks		
(a) Dwellings are generally to be set back 6m from street front boundary (b) On corner sites, the setback secondary frontage minimum 2m (c) Garages and carports,	Minimum front setbacks: - Lot 1: o To porch: 8m o To building line: Min. 8.6m	Yes

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<p>including semi-basement garages and attached garages, set back min 1m from façade</p> <p>(d) The front setback free of structures. The exception is car parking structures which comply with 2.11.</p> <p>(e) Attached garages, including semi-basement garages on secondary frontages not to protrude forward of the façade. The exception is garages located on battle axe allotments. These garages do not need to be setback.</p> <p>(f) The outside face of wall built above a garage aligns with the outside face of the garage wall below.</p>	<p>Minimum garage setbacks:</p> <ul style="list-style-type: none"> – Lot 1: <ul style="list-style-type: none"> ○ Setback: 9.757m ○ 1.757m behind front building line – Lot 2: <ul style="list-style-type: none"> ○ Setback: 18.06m ○ 1.08m behind front building line <p>The walls of the levels above garages on both lots will align with respective garages below</p>	
2.9.2 Side Setbacks		
<p>(a) One storey dwellings setback 900mm</p> <p>(b) Two storey dwellings setback 1.5m</p> <p>(c) The second storey addition to a single storey dwelling are to be set back 1.5m</p> <p>(d) Allotments wider than they are long, one side setback a min of 20% of the width of the lot or 8m, whichever is greater.</p>	<p>Minimum side setbacks:</p> <ul style="list-style-type: none"> – Lot 1: <ul style="list-style-type: none"> ○ Northeast: Min. 1.552m (to proposed internal boundary; 4.552m to existing boundary) ○ Southwest: Min. 1.55m – Lot 2: <ul style="list-style-type: none"> ○ Northeast: Min. 1.507m ○ Southwest: <ul style="list-style-type: none"> ● Ground Floor: 950mm ● First floor: 1.54m 	No
2.9.3 Rear Setbacks		
<p>(a) The rear setback min 25% of the site length or 8m, whichever is greater.</p> <p>(b) Allotments wider than they are long, min setback of 4m</p> <p>(c) Dwelling on battle axe allotment are to be setback the rear boundary of the front lot min of 8m. Single storey garage or outbuilding can be within setback.</p>	<ul style="list-style-type: none"> – Lot 1: <ul style="list-style-type: none"> ○ Proposed length of site: Max. 40m – 25% site length requirement applies. ○ Required rear setback: 10m ○ Proposed rear setback: Min. 12.5m – Lot 2: <ul style="list-style-type: none"> ○ Proposed length of site: Max. 51.4m – 25% site length requirement applies. ○ Required rear setback: 12.85m ○ Proposed rear setback: Min. 14.34m (to building line) 	Yes

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	<p>Front setback:</p> <ul style="list-style-type: none"> – Lot 2: <ul style="list-style-type: none"> ○ To porch: 16.5m ○ To building line: Min. 16.98m – Sufficient space within the front setback area to enable manoeuvring of a vehicle. 	
2.11 Car Parking and Access		
2.11.1 Car Parking		
<p>(a) Dwellings 2 spaces. Dual occ 1 space/dwg</p> <p>(b) Spaces can be enclosed or roofed.</p> <p>(c) Garages setback 1m behind front elevation.</p> <p>(d) Located forward of existing dwelling if:</p> <p>(i) there is no other suitable position</p> <p>(ii) no vehicular access to the rear of side of the site</p> <p>(iii) it is preferred that it is single car width.</p> <p>(e) Garages doors solid. No expanded mesh doors.</p> <p>(f) Preference located off laneways, secondary street frontages.</p> <p>(g) Driveway widths minimised. Driveways single car width except where needed to be widen to double garage access.</p> <p>(h) Driveways not roofed.</p> <p>(i) Min width 6m or 50% of the frontage whichever is less</p> <p>(j) Total width garage doors not be >5.7m</p> <p>(k) Driveways for battle axe enable vehicles to enter and leave in forward direction</p> <p>(l) Garage doors not be recessed more than 300mm</p> <p>(m) Garage windows >900mm from boundaries</p> <p>(n) Free standing garages max GFA 36m²</p> <p>(o) Design and materials to complement dwelling</p> <p>(p) Setback at least 1m from</p>	<p>Car parking spaces:</p> <ul style="list-style-type: none"> – Lot 1: One enclosed space – Lot 2: Two enclosed spaces <p>– Lot 1:</p> <ul style="list-style-type: none"> ○ Width of frontage: 8.23m ○ External width of garage: 3.26m, or 39.6% of the frontage. <p>– Lot 2:</p> <ul style="list-style-type: none"> ○ External width of frontage: 11.9m ○ Width of garage: 5.54m, or 46.9% <p>Garages are located behind building lines; refer to setback assessments above.</p> <p>Minimum garage setbacks:</p> <ul style="list-style-type: none"> – Lot 1: <ul style="list-style-type: none"> ○ Setback: 9.757m ○ 1.757m behind front building line – Lot 2: <ul style="list-style-type: none"> ○ Setback: 18.06m ○ 1.08m behind front building line <p>Garage door widths:</p> <ul style="list-style-type: none"> – Lot 1: 2.4m – Lot 2: 4.8m <p>Both garage doors are aligned with the front building line of the levels above.</p> <p>No garage windows proposed.</p>	<p>Yes</p>

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<p>façade</p> <p>(q) Carports not enclosed.</p>	<p>Garages integrated into both dwellings.</p> <p>Contrasting colours consistent with both dwellings proposed.</p> <p>Lot 2 – 5.49m Lot 1 – 3.3m</p> <p>Lot 1 – 5.5m Lot 5.7m</p> <p>Both driveways are sufficiently minimised.</p> <p>The design of both driveways would enable forward vehicular entry/exit to the site, although development engineer has raised concern with a potential space for Lot 1 – refer to discussion within report.</p>	
2.13 Landscaping		
<p>(a) Major trees to be retained where practical</p> <p>(b) Lots adjoining bushland, protect and retain indigenous native vegetation and use native indigenous plant spaces for a distance of 10m</p> <p>(c) Provide useful outdoor spaces</p> <p>(d) Physical connection between dwelling and external ground level</p> <p>(e) Provide landscape front garden. Hard paved areas no more than 40%.</p> <p>(f) Pathway along one side boundary connecting front to rear. Not to be blocked by ancillary structures. Not required where there is rear lane access or corner allotment.</p> <p>(g) Landscape elements in front garden to be compatible with scale of dwelling.</p> <p>(h) Front garden at least 1 canopy tree at least 10m in height</p>	<p>Primary-use POS areas (i.e. alfresco areas) would adjoin internal living areas. Connection from the elevated alfresco areas to the remainder of each POS area will be made via stairs.</p> <p>Unobstructed paths of travel would be located on at least one side of each dwelling.</p> <p>At least one significant tree is proposed within each front setback. Both trees would have mature heights of at least 10 metres.</p> <p>The landscape plans for Lot 1 show one significant trees within the rear setback with a mature height of at least 15 metres. The arboricultural report recommends planting of at least one large tree within the rear</p>	<p>Yes</p>

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<p>(i) Mature tree at least 15m in rear garden with the DSA.</p> <p>(j) Locate and design landscaping to increase privacy between dwellings.</p> <p>(k) Hedge planting on boundary no greater than 2.7m</p> <p>(l) Retaining walls and other landscape elements not to obstruct stormwater overland flow.</p> <p>(m) OSD not to be located within front setback unless it is underneath driveway</p> <p>(n) Landscaping to include POS</p> <p>(o) Designed to improve energy efficient of building and micro climate of external living areas.</p>	<p>setback to offset removal, noting that there are numerous large trees within the rear setback.</p> <p>Landscape plans indicate that hedging plants would have a mature height of approximately 2m.</p> <p>OSD is not located within the front setback of either lot.</p> <p>Lot 1:</p> <ul style="list-style-type: none"> ○ Front setback area: 96.5m² ○ Paved area: 38.49m² ○ Coverage: 39.9% <p>Lot 2:</p> <ul style="list-style-type: none"> ○ Front setback area: 241m² ○ Paved area: 90m² ○ Coverage: 37.3% 	
2.14 Dwelling Amenity		
2.14.1 Daylight and Sunlight Access		
<p>(a) Living areas are to be predominantly located to the north where possible</p> <p>(b) Sites with northern side boundary to have increased setback of 4 metres is preferred.</p> <p><u>Subject Dwelling</u></p> <p>(c) Windows to north facing living areas of subject dwellings are to receive at least 3 hours of sunlight between 9am to 3pm on June 21.</p> <p>(d) Private open space is to receive at least 2 hours sunlight between 9am to 3pm on June 21.</p> <p><u>Neighbouring properties:</u></p> <p>(e) For neighbouring properties:</p> <p>(i) sunlight to 50% of principal areas of ground level POS is not reduced to less than 2 hours between 9am to 3pm on 21 June</p> <p>(ii) windows to north facing living</p>	<p>With the exception of the Lot 1 lounge room, the internal living areas of both dwellings would be oriented towards the rear (i.e. northern) and northeast side boundaries.</p> <p>Open plan living areas on the ground floor of each dwelling have windows directed toward the north that would be capable of obtaining at least 3 hours of direct solar access on June 21.</p> <p>The private open space areas of both allotments would be capable of receiving at least 2 hours solar access on June 21</p> <p><u>Lot 1:</u></p> <p>Due to the orientation of the site, the dwelling would notably overshadow the northeast elevation of the adjoining dwelling at 2/36 Wicks Road.</p>	<p>Yes</p>

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<p>areas to receive at least 3 hours of sunlight between 9am and 3pm on 21 June over a portion of surface, where can be reasonably maintained given orientation and topography.</p>	<p>Such overshadowing would not affect the rear-facing internal living areas of this dwelling, and the private open space would be entirely unaffected at 12:00pm on June 21. Compliance would be maintained.</p> <p><u>Lot 2:</u> Due to the orientation of the site, the dwelling would notably overshadow the northeast facade of the adjoining dwelling at 2/36 Wicks road. Such overshadowing would not adversely affect the rear-facing internal living areas of this dwelling, and at least 3 hours of direct solar access would be obtainable to a large window at the rear of the ground floor on this northeast facade. The proposed dwelling would not affect the private open space of this adjoining property on June 21, with only very minor overshadowing associated with a water tank within the rear setback.</p> <p>The proposal would permit at least 3 hours of sunlight into the northwest-facing living area windows of the dwellings at 2/36 and 36A Wicks Road on June 21</p>	
2.14.2 Visual Privacy		
<p>(a) Orientate the windows of main living spaces (living room, dining, kitchen, family etc) to the front and rear</p> <p>(b) Orientate terraces, balconies and outdoor living areas to front or rear and not side boundary</p> <p>(c) Terraces and balconies are not to overlook neighbour's living areas and POS</p> <p>(d) Living and kitchen windows, terraces and balconies are not to allow direct view into neighbouring dwelling or POS</p>	<p><u>Lot 1:</u> The level 2 rumpus room within the dwelling on Lot 1 would address the northeast side elevation, however it features a window sill raised 1.6m above the floor level to maximise visual privacy. Two family room windows on the northeast elevation of the ground floor, however due to the adjoining access handle to Lot 2 these windows would be sufficiently set back to minimise adverse</p>	<p>Yes</p>

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<p>(e) Side windows are to be offset by sufficient distance to avoid visual connection between dwellings.</p> <p>(f) Splayed walls with windows are not to be located above ground level where the windows provide views into adjoining property.</p>	<p>privacy impacts.</p> <p><u>Lot 2:</u> The windows of living areas are predominantly oriented towards the front and rear of both dwellings. The level 2 rumpus room within the dwelling on Lot 1 would address the northeast side elevation, however it features a window sill raised 1.6m above the floor level to maximise visual privacy.</p> <p>The placement of side-facing windows is generally considered to be satisfactory; while concern is raised by a neighbour regarding the heights of the kitchen and pantry windows, these are set close enough to natural ground level that views from these windows are likely to be obscured by a 1.8 metre boundary fence. There is however concern about views from the northeast side of the Lot 2 alfresco area and adjoining internal living areas</p> <p>As such, a condition is recommended that would require a privacy screen at least 1.6 metres high when measured from the FFL of the alfresco area to preserve the privacy of dwellings at 40 Wicks Road.</p> <p>Side windows would be mostly offset from those on adjoining sites to avoid visual privacy impacts. Concern is however raised regarding the placement and design of the southwest-facing stairway window on Lot 1. This window is for a high-use area and may enable views between this area and first-floor bedroom windows within 36 Wicks Road. A condition is</p>	

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	<p>therefore recommended that would require views from the window to be obscured (either by frosting of the glass and/or privacy screening).</p> <p>Elevated ground floor alfresco area Lot 2 may create over looking into 40 Wicks Road; condition 1(a) recommended requiring a privacy screen.</p>	
2.14.3 Acoustic Privacy		
<p>(a) Noise of mechanical equipment not exceed 5dB(A) above background noise measured in or on any premises in vicinity of the item.</p> <p>(b) Dwellings on arterial roads double glazed windows fronting road.</p> <p>(c) Dwellings on arterial roads acoustic seal on the front door.</p> <p>(d) Dual occupancies are to be designed to reduce noise transmission between dwellings.</p>	<p>Proposal is not considered to generate any additional noise than what would be expected in a low density residential area.</p>	Yes
2.14.4 View Sharing		
<p>(a) The siting of development is to provide for view sharing.</p>	<p>No significant views are obtainable from the subject site or surrounding sites.</p>	Yes
2.14.5 Cross Ventilation		
<p>(a) Designed to optimise access to prevailing breezes and provide for cross ventilation.</p>	<p>Windows proposed within each elevation</p>	Yes
2.15 External Building Elements		
2.15.1 Roofs		
<p>(a) Relate roof design to the desired built form by:</p> <p>(i) articulating the roof</p> <p>(ii) roof is consistent with the architectural character of dwelling</p> <p>(iii) eaves minimum 450mm overhang on pitched roofs</p> <p>(iv) compatible roof form, slope, material and colour to adjacent buildings</p> <p>(v) roof height is in proportion to the wall height of the building</p> <p>(b) The main roof not trafficable terrace.</p>	<p>Min 450mm eaves proposed</p> <p>No traffic roofs or skylights proposed</p>	Yes

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<p>(c) Proposed attic contained within the volume of the roof space.</p> <p>(d) Skylights to be minimised on roof planes visible from the public domain. Skylights are to be symmetrical.</p> <p>(e) The front roof plane is not to contain both dormer and skylight. Dormers are preferred.</p> <p>(f) Balconies and terraces are not to be set into roofs.</p> <p>(g) Scale of the roof is to be in proportion with the scale of the wall below.</p> <p>(h) Attics may be located in the garage roofs if the garage is located next to the dwelling. Garages located within front or rear setbacks are not to have attics.</p>		
2.16 Fences		
2.16.1 Front and return Fences and Walls		
<p>(a) Reflect the design of the dwelling</p> <p>(b) Materials compatible with the house and other fences in streetscape</p> <p>(c) Solid fence or wall max 900mm. Open light weight fence (timber picket) 1m.</p> <p>(d) Return fence is to be no higher than front fence</p> <p>(e) Fences max 1.8m if 50% open with solid base max 900mm</p> <p>(f) Fences arterial road solid and 1.8m max</p> <p>(g) No Colorbond or timber paling.</p> <p>(h) Retaining walls max 900mm</p> <p>(i) Overland flow - fencing open not impede flow of water</p> <p>(j) Fence piers max 350mm.</p>	<p>No front fences are proposed; a masonry letter box is however proposed with colours to match the Lot 1 dwelling.</p>	<p>Yes</p>
2.16.2 Side and Rear Fences and Walls		
<p>(a) 1.8m Max side and rear fence</p> <p>(b) Overland flow - fencing to be open not impede flow of water</p> <p>(c) No Barbed wire, broken glass or other dangerous elements.</p> <p>(d) Fencing forward of the foreshore building line open and permeable.</p>	<p>Existing side boundary fences are to be retained. 1.8m high lapped and capped side and rear boundary fences are proposed on boundaries where no side/rear fences are currently erected.</p>	<p>Yes</p>

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Part 7: Environment		
7.1: Energy Smart, Water Wise		
3.0 The information Guide		
3.2 Required information		
(a) Energy efficiency performance report (b) Site analysis	Refer to BASIX Certificates 964743S_06 (Lot 1) and 964785S_07 (Lot 2) Plans consistent with Certificate	Yes
Part 7.2 Waste Minimisation and Management		
2.3 All developments		
(a) Developments must provide space for onsite waste containers (b) Compliant size of storage areas and number of storage containers. (c) Space to be provided for bulk waste where appropriate. (d) Storage of green waste provided (e) Stored within the boundaries of the site. (f) Site Waste Minimisation and Management Plan (SWMMP) to be submitted. (g) Located to provide easy, direct and convenient access. (h) No incineration devices. (i) Collection point identified on plan. (j) Path for wheeling bin collection not less than 14:	Storage areas provided within each allotment	Yes
2.4 Demolition and Construction		
(a) Demolition must comply with AS and WorkCover (b) Demolition work plan submitted (c) Dedicated area on site for stockpile of materials taking into account environmental factors and amenity impacts. (d) Construction materials to be stored away from the waste materials on site.	Conditions recommended. Plan shows dedicated area for stockpile of waste.	Yes
2.5 Residential Developments comprising 1 or 2 Dwellings		
(a) Space inside each dwelling for receptacles for garbage, recycling. (b) Space provided outside the dwellings to store the required garbage, recycling and green waste	Sufficient spaces provided within each allotment	Yes

ITEM 2 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
bins. Screened from street. Easy access to wheel the bins to the kerbside.		
Part 8: Engineering		
8.1 Construction Activities		
2.1.2 Erosion and Sediment Control Plan		
Erosion and sediment control plan to be submitted.	Erosion and sediment control plan provided	Yes
Part 8.2 Stormwater and Floodplain Management		
2.0 Stormwater Drainage		
(a) Drainage is to be piped in accordance with Section 2.0 Stormwater Drainage Application has been consideration satisfactory by Development Engineering and City Works.	Council's Development Engineer is satisfied that – subject to conditions – the proposed drainage arrangements will be in accordance with Part 8.2 of the DCP.	Yes
Part 8.3 Driveways		
3.0 Existing footway crossings		
3.1(a) Existing footway crossings may only be used when they provide access of max of 2 dwgs, correct location and level and adequate width. In good condition and is not a bridge or piped crossing.		Yes
3.2(a) disused footway crossing slabs that become redundant are to be removed and footway restored.	Condition recommended regarding reinstatement of redundant crossing.	Yes
4.0 Designing internal access roads and parking spaces		
4.1 (a) the design of all parking spaces, circulation roads and manoeuvring areas on the property must confirm to the minimum requirements of AS2890.1-2004.		Yes
4.2 Design of Parking Spaces		
(b) Vehicles (85 th percentile) to enter and leave designated parking space in a single 3 point turn manoeuvre. A 99 th percentile vehicle for disabled vehicles. (c) Enter and leave in a forward direction. Waived where the garage is located at the front of a dwelling and insufficient space within front setback to provide a turning area.	Subject to deferred commencement condition	Yes
S2.0 Design Standards		
S2.2 Vehicular crossing widths		

ITEM 2 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
(a) Min 3.0m and max of 5.0m. (b) Max width of 6m to facilitate accessing two adjacent garages if the distance between the space and the street frontage is less than 5.0m	3.0m	Yes
Part 9.2 Access for People with Disabilities		
4.1.2 Class 1 Buildings		
Accessible path required from the street to the front door, where the level of land permits.	Accessible paths of travel are proposed to the front of both dwellings.	Yes
Part 9.3 Parking Controls		
2.2 Residential Lane Uses		
- Dwelling houses up to 2 spaces/dwelling - Dual occupancy 1 space/dwelling	Lot 1 – 1 space Lot 2 – 2 spaces	Yes

ITEM 2 (continued)

ATTACHMENT 2

PART 1 - The following are the Deferred Commencement condition(s) imposed pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979.

(A) Pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent is granted to LDA2019/411 subject to the following conditions:

1.Drainage Easement. Prior to the commencement of any works, an easement to drain stormwater from the development must be acquired over downstream property (Golf Course). The easement is to be located generally as shown on the concept plan by ALW Design Pty Ltd, drawing number SW18318-S4, revision DD, dated 20th February 2020, must have a defined width and must comply with the DCP Part 8.2 (*Stormwater and Floodplain Management*) & Part 8.4 (*Title Encumbrances*).

The terms of the easement should reference Schedule 8 of the Conveyancing Act – 1919 (*"Easement to drain water"*). The easement plan and associated terms agreed upon by all parties must be submitted to Council for review and approval prior to the submission to the NSW Land Registry Services (LRS) for registration. Council must be listed as the prescribed authority to release or vary the terms of the easement.

Documentary evidence of registration of the drainage easement on the title of the burdened lot, including the terms of the drainage easement and its location on the burdened lot(s) which are consistent with the draft approved by Council, must be submitted to Council to demonstrate the requirements of this condition have been satisfied prior to the activation of this Development Consent.

2.Vehicular Forward Entry & Exit – Lot 1. To ensure the single off-street parking space provided to Lot 1 can achieve safe access to and from Wicks Road, which is classified as a sub-arterial road, forward entry and exit must be provided. The architectural plan, completed by Hall & Hart Homes Pty Ltd, drawing number H0164 page 2 of 13, revision H, dated 18th June 2020, depicts a permeable driveway adjacent to the driveway where there are concerns insufficient area has been provided to ensure compliance. As a result, swept path diagrams completed in accordance with AS2890.1 demonstrating compliance are required to be submitted to Council for review. The swept paths are to be limited to 3 vehicular manoeuvres. Documentation demonstrating compliance of this item must be submitted to Council for approval prior to the issue of the Development Consent.

(B) Written evidence that the matters identified in deferred commencement conditions (a)(1) and (2) above have been satisfied, must be submitted to council within 12 months from the date of this development consent, failing which, this development consent **will lapse** pursuant to Section 4.53(6) of the Environmental Planning and Assessment act 1979.

ITEM 2 (continued)

ATTACHMENT 2

- (C) This Development Consent will not operate until such time that the Council notifies the Applicant in writing that deferred commencement consent conditions (A)(1) and (2) above have been satisfied; and
- (D) Upon Council giving written notification to the Applicant that deferred commencement consent conditions (A)(1) and (2) above have been satisfied, the development consent will become operative from the date of that written notification, subject to the following conditions of consent:

The conditions in the following sections of this consent shall apply upon satisfactory compliance with the above requirements and receipt of appropriate written confirmation from Council.

PART 2 - The conditions in the following sections of this consent shall apply upon satisfactory compliance with the above requirements and receipt of appropriate written confirmation from Council.

GENERAL

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

- 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 – Lot 1	18/06/2020	Job No. H0164, page 2 of 13 Rev H prepared by Hall & Hart Homes
Ground Floor Plan – Lot 1	18/06/2020	Job No. H0164, page 4 of 13 Rev H prepared by Hall & Hart Homes
First Floor Plan – Lot 1	18/06/2020	Job No. H0164, page 5 of 13 Rev H prepared by Hall & Hart Homes
Elevations – Lot 1	18/06/2020	Job No. H0164, page 6 of 13 Rev H prepared by Hall & Hart Homes
Elevations – Lot 1	18/06/2020	Job No. H0164, page 7 of 13 Rev H prepared by Hall & Hart Homes
Section A-A – Lot 1	18/06/2020	Job No. H0164, page 8 of 13 Rev H prepared by Hall & Hart Homes
Slab/Drainage Plans – Lot 1	18/06/2020	Job No. H0164, page 9 of 13 Rev H prepared by Hall & Hart

ITEM 2 (continued)

ATTACHMENT 2

		Homes
Site Management/Sediment Plan – Lot 1	18/06/2020	Job No. H0164, page 10 of 13 Rev H prepared by Hall & Hart Homes
Site Analysis Plan – Lot 1	18/06/2020	Job No. H0164, page 11 of 13 Rev H prepared by Hall & Hart Homes
Landscape Plan – Lot 1	11/06/2020	Sheet L-01 Rev D prepared by eco-design
External Materials & Finishes – Lot 1	23/01/2019	Job No. H0164 prepared by Hall & Hart Homes
Site Stormwater Management Layout – Lot 1	20/02/2020	Job No. SW18318, Drawing No. SW18318-S2 Issue DD prepared by alwdesign
Roof Layout & General Details– Lot 1	20/02/2020	Job No. SW18318, Drawing No. SW18318-S3 Issue DD prepared by alwdesign
Site Plan – Lot 2	26/06/2019 (15/11/19)	Job No. H0164, page 2 of 14 Rev H prepared by Hall & Hart Homes
Ground Floor Plan – Lot 2	26/06/2019 (15/11/19)	Job No. H0164, page 4 of 14 Rev H prepared by Hall & Hart Homes
First Floor Plan – Lot 2	26/06/2019 (15/11/19)	Job No. H0164, page 5 of 14 Rev H prepared by prepared by Hall & Hart Homes
Elevations – Lot 2	26/06/2019 (15/11/19)	Job No. H0164, page 6 of 14 Rev H prepared by Hall & Hart Homes
Elevations – Lot 2	26/06/2019 (15/11/19)	Job No. H0164, page 7 of 14 Rev H prepared by Hall & Hart Homes
Section A-A – Lot 2	26/06/2019 (15/11/19)	Job No. H0164, page 8 of 14 Rev H prepared by Hall & Hart Homes
Slab/Drainage Plans – Lot 2	26/06/2019 (15/11/19)	Job No. H0164, page 9 of 14 Rev H prepared by Hall & Hart Homes
Site Analysis Plan – Lot 2	26/06/2019 (15/11/19)	Job No. H0164, page 10 of 14 Rev H prepared by Hall & Hart Homes
Site Management/Sediment Plan – Lot 2	26/06/2019	Job No. H0164, page 11 of 14 Rev H prepared by Hall & Hart Homes
Landscape Plan – Lot 2	28/06/2019	Sheet L-01 Rev B prepared by

ITEM 2 (continued)

ATTACHMENT 2

		eco-design
External Materials & Finishes – Lot 2	23/01/2019	Job No. H0164 prepared by Hall & Hart Homes
Site Stormwater Management Layout – Lot 2	20/02/2020	Job No. SW18318, Drawing No. SW18318-S4 Issue DD prepared by alwdesign
Roof Layout & General Details– Lot 2	20/02/2020	Job No. SW18318, Drawing No. SW18318-S5 Issue DD prepared by alwdesign
Plan of Proposed Subdivision		Surveyor Ref. 5737-17 DP
Proposed Subdivision Layout	20/02/2020	Job No. SW18318, Drawing No. SW18318-S1 Issue DD prepared by alwdesign
BASIX Certificate No. 964743S_06	07/07/2020	Prepared by Frys Energywise
BASIX Certificate No. 964743S_07	07/07/2020	Prepared by Frys Energywise
Arboricultural Impact Assessment	22/06/2020	Prepared by Arboreport
Waste Management Plan	21/01/2019	Prepared by Jessica Samyia

Prior to the issue of a **Construction Certificate**, the following amendments shall be made:

- (a) A privacy screen shall be erected along the north eastern elevation of the alfresco associated with the dwelling on Lot 2 to a height of 1.6 metres above the finished floor level.
- (b) The first floor window associated with the stairway within the south western elevation of proposed dwelling on Lot 1 shall be constructed of obscure glazing.

The Development must be carried out in accordance with the amended plans approved under this condition.

Reason: To prevent privacy impacts to neighbouring properties at 1/40 and 36 Wicks Road.

2. Inconsistency between documents

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail.

Reason: To ensure that the development is in accordance with the determination.

3. Building Code of Australia. All building works approved by this consent must be carried out in accordance with the requirements of the Building Code of Australia.

Reason: Statutory requirement.

ITEM 2 (continued)

ATTACHMENT 2

4. **BASIX.** Compliance with all commitments listed in BASIX Certificates numbered 964743S_06 and 964743S_06, dated 7 July 2020.

Reason: Statutory requirement.

5. **Support for neighbouring buildings.** If the development involves excavation that extends below the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (a) Protect and support the adjoining premises from possible damage from the excavation, and
- (b) Where necessary, underpin the adjoining premises to prevent any such damage, in accordance with relevant Australian Standards.

Reason: To ensure the structural protection of adjoining properties.

6. **Hours of work.** Building activities (including demolition) may only be carried out between 7.00am and 7.00pm Monday to Friday (other than public holidays) and between 8.00am and 4.00pm on Saturday. No building activities are to be carried out at any time on a Sunday or a public holiday.

Reason: To ensure reasonable standards of amenity for occupants of neighbouring properties.

7. **Hoardings.**

- (a) A hoarding or fence must be erected between the work site and any adjoining public place.
- (b) Any hoarding, fence or awning erected pursuant this consent is to be removed when the work has been completed.

Reason: To ensure the safety of the public and hoarding/fencing is removed at the completion of the development.

8. **Illumination of public place.** Any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

Reason: To ensure the safety of the public.

9. **Public space.** The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances, without prior approval from Council.

Reason: To ensure public spaces are unobstructed during construction.

ITEM 2 (continued)

ATTACHMENT 2

10. **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 compliance with design and construction standards.

11. **Service Alterations.** All services or utilities required to be altered in order to complete the development works are to be undertaken in accordance with the requirements of the relevant service provider (eg Telstra, Jemena, Ausgrid, etc), with all costs associated with this alteration to be borne by the applicant.

Reason: To ensure services are provided to dwellings.

12. **Restoration.** Public areas must be maintained in a safe condition at all times. Restoration of disturbed road and footway areas for the purpose of connection to public utilities will be carried out by Council following submission of a permit application and payment of appropriate fees. Repairs of damage to any public stormwater drainage facility will be carried out by Council following receipt of payment. Restoration of any disused gutter crossings will be carried out by Council following receipt of the relevant payment.

Reason: To ensure the protection of public during works.

13. **Road Opening Permit.** In accordance with the requirements of the Roads Act, the applicant must obtain consent (*Road opening Permit*) from Council prior to any excavation being undertaken in the road reserve (this includes verge and public footpath areas). No works shall be carried out in the road reserve without this permit being paid and a copy kept on the site.

Reason: To ensure compliance with the requirements of *Roads Act 1993*.

14. **Public Utilities.** Compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra, RMS, Council etc) in relation to any connections, works, repairs, relocation, replacements and/or adjustments to public infrastructure or services affected by the development.

Reason: To ensure access to public utilities.

15. **Development to be within site boundaries.** The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structure shall encroach onto the adjoining properties. Gates must be installed so they do not open onto any footpath.

Reason: To ensure works are undertaken within the site.

ITEM 2 (continued)
STAGE 1 – SUBDIVISION

ATTACHMENT 2

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.

16. **Final Plan of Subdivision.** The submission of a final plan of subdivision plus three copies suitable for endorsement by the Authorised Officer.

Reason: To provide required documentation.

17. **Final plan of subdivision - title details.** The final plan of subdivision shall contain detail all existing and/or proposed easements, positive covenants and restrictions of the use of land

Reason: To ensure the subdivision plans identifies all easements and restrictions.

18. **Existing Easements and Restrictions.** The applicant must acknowledge all existing easements and restrictions of the use of land on the final plan of subdivision.

Reason: To ensure all existing easements and restrictions are shown on the plan of subdivision.

19. **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 ensure all structures are located within the site.

20. **Registration of easements.** The registration of all necessary easements is required to ensure all proposed lots will have legal access to all utility services, drainage and vehicular access. Prior to release of the Subdivision Certificate, certification shall be obtained from a registered surveyor and submitted to Council confirming the above requirement will be met upon registration of the linen plan at the Land and Property Information.

Reason: To ensure all required easements are registered.

21. **Easement to Drain Water.** The drainage system servicing one of the lots is noted to traverse the alternate lot(s) and therefore an Easement to Drain Water must be created over the respective part(s) of the drainage system. Where the subdivision will result in rainwater storage/ detention tanks straddling the new lot boundaries, a reciprocal drainage 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 the

ITEM 2 (continued)

ATTACHMENT 2

Council's DCP Parts 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. Plans and documentation complying with this condition must be submitted with the application for a Subdivision Certificate.

Reason: To ensure the creation of the drainage easement.

22. **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. A Section 73 Compliance Certificate must be completed before the issue of any Occupation Certificate. Sydney Water will assess the development and if required will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator.

Go to www.sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

Reason: Statutory requirement.

23. **Utility provider – compliance.** Compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra, RMS, Council etc).

Reason: To ensure all services are provided.

24. **88B Instrument.** If required, the submission of an instrument under Section 88B of the Conveyancing Act 1919 with 2 copies, creating any Easements, Positive Covenants and Restrictions on use, the City of Ryde being the authority empowered to release vary or modify the same.

Reason: To ensure the creation of the Section 88B.

25. **Section 7.11.** A monetary contribution for the services in Column A and for the amount in Column B shall be made to Council as follows:

A – Contribution Type	B – Contribution Amount
Community & Cultural Facilities	\$6,061.80
Open Space & Recreation Facilities	\$10,438.15
Transport Facilities	\$3,204.48
Plan Administration	\$295.57
The total contribution is	\$20,000.00

ITEM 2 (continued)

ATTACHMENT 2

These are contributions under the provisions of Section 7.11 of the Environmental Planning and Assessment Act, 1979 as specified in Section 7.11 Development Contributions Plan 2020, effective from 1 July 2020.

The above amounts are current at the date of this consent, and are subject to **quarterly** adjustment for inflation on the basis of the contribution rates that are applicable at time of payment. Such adjustment for inflation is by reference to the Consumer Price Index published by the Australian Bureau of Statistics (Catalogue No 5206.0) – and may result in contribution amounts that differ from those shown above.

A copy of the Section 7.11 Development Contributions Plan may be inspected at the Ryde Planning and Business Centre, 1 Pope Street Ryde (corner Pope and Devlin Streets, within Top Ryde City Shopping Centre) or on Council's website <http://www.ryde.nsw.gov.au>.

STAGE 2 – CONSTRUCTION OF SINGLE DWELLINGS

PRIOR TO CONSTRUCTION CERTIFICATE

A Construction Certificate must be obtained from a Principal Certifying Authority to carry out the relevant building works approved under this consent. All conditions in this Section of the consent must be complied with before a Construction Certificate can be issued.

Council Officers can provide these services and further information can be obtained from Council's Customer Service Centre on 9952 8222.

Unless an alternative approval authority is specified (eg Council or government agency), the Principal Certifying Authority is responsible for determining compliance with the conditions in this Section of the consent.

Details of compliance with the conditions, including plans, supporting documents or other written evidence must be submitted to the Principal Certifying Authority.

26. Subdivision. The approved subdivision, creating two new lots, must be registered prior to the issue of any **Construction Certificate**.

Reason: In order to facilitate orderly development of land and ensuring the proposal does not result in a prohibited land use (detached dual occupancy).

27. Amended Stormwater Plan. The following changes indicated in the Arborist Report prepared by Arboreport dated 18/06/2020 must be shown on an amended Stormwater Plan:

"Tree 1 ...The location of the excavation for the proposed pipe should be diverted to outside the SRZ, ie at an offset of 1500mm from the northern boundary, and using a similar deflection angle to that of the layout of the proposed driveway edge east of the proposed strip drain."

ITEM 2 (continued)

ATTACHMENT 2

"Tree 8... In order to retain and protect this tree, design modification must be carried out and implemented. A design should be considered to underbore from a sending pit located in the north west of Lot 2 (or east of TPZ of Tree 3 if that tree was to be retained), extending to the indicated stormwater main, as this solution will potentially reduce encroachment within the TPZ of Trees 6, 8 & 9. For the purposes of impact consideration, we have assumed a sending pit size of 2mx 3m which we understand could be located within Lot 2 38 Wicks Rd. The depth from existing surface would need to be a minimum of 1m to top of underbored pipe within the SRZ of all potentially affected trees (Trees 3, 6, 8 & 9). An approximate recommended location of a sending pit and an underbored section of pipe is indicated in green within a broader area (green rectangle in the Tree Location Plan). We understand that there is some flexibility in the design of the location and direction of this discharge pipe connecting to the stormwater main."

Amended Stormwater Plans are to be submitted to and approved by the Principal Certifier prior to the issue of a **Construction Certificate**.

28. **Compliance with Australian Standards.** The development is required to be carried out in accordance with all relevant Australian Standards. Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Principal Certifying Authority prior to the issue of the **Construction Certificate**.

Reason: To ensure compliance with the Australian Standards.

29. **Structural Certification.** The applicant must engage a qualified practising structural engineer to provide structural certification in accordance with relevant BCA requirements prior to the release of the **Construction Certificate**.

Reason: To ensure the structural integrity of the approved development.

30. **Security deposit.** The Council must be provided with security for the purposes of section 4.17(6) of the *Environmental Planning and Assessment Act 1979* in a sum determined by reference to Council's Management Plan prior to the release of the **Construction Certificate**. (category: dwelling houses with delivery of bricks or concrete or machine excavation)

Reason: Statutory requirement.

31. **Fees.** The following fees must be paid to Council in accordance with Council's Management Plan prior to the release of the **Construction Certificate**:

- (a) Infrastructure Restoration and Administration Fee
- (b) Enforcement Levy

Reason: Statutory requirement.

ITEM 2 (continued)

ATTACHMENT 2

32. **Driveway Access Levels.** The applicant is to apply to Council, pay the required fee, and have issued site specific driveway access levels by Council prior to the issue of the **Construction Certificate**.

Reason: To provide suitable vehicular access.

33. **Vehicle Footpath Crossing(s).** Concrete footpath crossings and associated gutter crossovers must be constructed fronting the approved vehicle access location(s). The crossing(s) must be constructed in plain reinforced concrete with location, design and construction shall conform to Council requirements and AS 2890.1 – 2004 (Off street Parking). Accordingly, prior to issue of Construction Certificate an application shall be made to Council's Public Works division for driveway crossing alignment levels. These issued levels are to be incorporated into the design of the driveway access and clearly delineate on plans submitted with the Construction Certificate application.

Reason: To ensure appropriate levels are incorporated into the development.

34. **Long Service Levy.** Documentary evidence of payment of the Long Service Levy under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 is to be submitted to the Principal Certifying Authority prior to the issuing of the **Construction Certificate**.

Reason: Statutory requirement.

35. **Sydney Water – Building Plan Approval.** The plans approved as part of the Construction Certificate must also be approved by Sydney Water prior to excavation or construction works commencing. This allows Sydney Water to determine if sewer, water or stormwater mains or easements will be affected by any part of your development. Please go to www.sydneywater.com.au/tapin to apply.

Reason: Statutory Requirement.

36. **Reflectivity of materials.** Roofing and other external materials must be of low glare and reflectivity. Details of finished external surface materials, including colours and texture must be provided to the Principal Certifying Authority prior to the release of the **Construction Certificate**.

Reason: To ensure the use of appropriate roofing material to minimise reflectivity and impacts upon amenity.

37. **Fencing.** Fencing is to be in accordance with Council's DCP 2014: Part 3.3 – Dwelling Houses and Dual Occupancy (attached) – Section 2.16 - Fences. Details of compliance are to be provided in the plans for the **Construction Certificate**.

Reason: To ensure fencing is compliant with Council's policy requirements.

ITEM 2 (continued)

ATTACHMENT 2

38. **Vehicle Access & Parking.** All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off street Parking standards).

With respect to this, the following revision(s) / documentation must be provided with the plans submitted with the application for a Construction Certificate:

- a) To allow for adequate sight distance from a vehicle exiting the property to pedestrians in the footpath area, the northern side of the driveway entry at the property boundary must have clear sight through a splayed region defined by Figure 3.3 of AS 2890.1 (2004) and Council's DCP. Ideally the region is to be free of all obstructions, otherwise any solid obstructions are to be no greater than 900mm above finished surfaces and horizontal fencing/ slats are to permit more than 50% visual permeability.

These amendment(s) must be clearly marked on the plans submitted to the Accredited Certifier prior to the issue of a Construction Certificate.

Reason: To demonstrate compliance with AS 2890.1 (2004) and Council's DCP

39. **Stormwater Management.** Stormwater runoff from the development shall be collected and piped by gravity flow to the downstream property via the drainage easement registered as per the deferred commencement condition of this consent, generally in accordance with the plans by ALW Design Pty Ltd, drawing number SW18319 S1 to S5, revision DD, dated 20th February 2020, subject to any variations marked in red on the approved plans or noted following;

- The plans must be amended to incorporate the registered drainage easement location as required by the imposed deferred commencement condition.
- Additional strip drains are required along the access handle to prevent the concentration of stormwater runoff.
- To protect the existing trees surrounding the site, the plan is to be amended to comply with the requirements of the condition of consent labelled *Amended Stormwater Plan*

The detailed plans, documentation and certification of the drainage system must be submitted with the application for a Construction Certificate and prepared by a suitably qualified Civil Engineer and comply with the following;

- The certification must state that the submitted design (including any associated components such as WSUD measures, pump/ sump, absorption, onsite dispersal, charged system) are in accordance with the requirements of AS 3500.3 (2003) and any further detail or variations to the design are in accordance with the requirements of Council's DCP 2014 Part 8.2 (*Stormwater and Floodplain Management*) and associated annexures.
- The submitted design is consistent with the approved architectural and landscape plan and any revisions to these plans required by conditions of this consent.

ITEM 2 (continued)

ATTACHMENT 2

Reason: To ensure effective stormwater management.

40. **Stormwater Management - Onsite Stormwater Detention.** In accordance with Council's community stormwater management policy, an onsite stormwater detention (OSD) system must be implemented in the stormwater management system of the development.

As a minimum, the OSD system must;

- a) provide site storage requirement (SSR) and permissible site discharge (PSD) design parameters complying with Council's DCP 2014 Part 8.2 (Stormwater and Floodplain Management).
- b) incorporate a sump and filter grate (trash rack) at the point of discharge from the OSD system to prevent gross pollutants blocking the system or entering the public drainage service,
- c) ensure the OSD storage has sufficient access for the purpose of ongoing maintenance of the system, and
- d) ensure the drainage system discharging to the OSD system is of sufficient capacity to accommodate the 100 year ARI 5 minute storm event.

Detailed engineering plans and certification demonstrating compliance with this condition & Council's DCP 2014 Part 8.2 (*Stormwater and Floodplain Management*) are to be submitted with the application for a Construction Certificate.

Reason: To ensure effective stormwater management.

41. **Vehicle Footpath and Gutter Crossover Approval.** A new vehicle footpath crossing and associated gutter crossover shall be constructed at the approved vehicular access location/s. Where there is an existing vehicle footpath crossing and gutter crossover, the reconstruction of this infrastructure may be required in order that it has a service life consistent with that of the development and ensure it is compliant with current Council's standards and specifications. The location, design and construction shall be in accordance with Council's DCP 2014 Part 8.3 (*Driveways*), Part 8.5 (*Public Civil Works*) and Australian Standard AS2890.1 – 2004 (*Offstreet Parking*).

Prior to the issue of the Construction Certificate, an application shall be made to Council for approval under Section 138 of the Roads Act, 1993, for the construction of the vehicle footpath and gutter crossover. The application shall include engineering design drawings of the proposed vehicle footpath crossing and gutter crossover. The drawings shall be prepared by a suitably qualified Civil Engineer using the standard B85 vehicle profile. The drawings shall show the proposed vehicle footpath crossing width, alignment, and any elements impacting design such as service pits, underground utilities, power poles, signage and/or trees. In addition, a benchmark (to Australian Height Datum) that will not be impacted by the development works shall be included. All grades and transitions shall comply with Australian Standard AS 2890.1-2004 Offstreet Parking and Council's specifications. The new crossing shall be 3.0 m. wide each, without the splays, and shall be constructed at right angle to the alignment of the kerb and gutter, and located no closer than 1m from any power pole and 3m from any street tree unless otherwise approved by Council.

ITEM 2 (continued)

ATTACHMENT 2

Fees are payable at the time of the application, in accordance with Council's Schedule of Fees and Charges.

The Council approved design details shall be incorporated into the plans submitted for the application of the Construction Certificate.

Reason: To ensure the location, design and construction of civil works are compliant with relevant standards and requirements.

42. **Erosion and Sediment Control Plan.** An Erosion and Sediment Control Plan (ESCP) must be prepared by a suitably qualified consultant, detailing soil erosion control measures to be implemented during construction. The ESCP is to be submitted with the application for a Construction Certificate. The ESCP must be in accordance with the manual *"Managing Urban Stormwater: Soils and Construction"* by NSW Department – Office of Environment and Heritage and must contain the following information;

- Existing and final contours
- The location of all earthworks, including roads, areas of cut and fill
- Location of all impervious areas
- Location and design criteria of erosion and sediment control structures,
- Location and description of existing vegetation
- Site access point/s and means of limiting material leaving the site
- Location of proposed vegetated buffer strips
- Location of critical areas (drainage lines, water bodies and unstable slopes)
- Location of stockpiles
- Means of diversion of uncontaminated upper catchment around disturbed areas
- Procedures for maintenance of erosion and sediment controls
- Details for any staging of works
- Details and procedures for dust control.

The ESCP must be submitted with the application for a Construction Certificate. This condition is imposed to protect downstream properties, Council's drainage system and natural watercourses from sediment build-up transferred by stormwater runoff from the site.

Reason: Protection of the environment.

43. **Compensatory Tree Planting** of two local Australian native trees with a minimum pot size of 45 litres to be planted in the rear yard, to reach a height of 15m at maturity with a spreading canopy. Details are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a **Construction Certificate**.

Reason: To ensure require tree planting is provided.

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44. **Tree planting – location.** The compensatory trees are to be planted a minimum of 3m from any property boundary. Details are to be submitted to and approved by the Principal Certifying Authority prior to the issue of the **Construction Certificate**.

Reason: To ensure future development on an adjacent site is not affected by the root zone of trees on the subject site.

PRIOR TO COMMENCEMENT OF CONSTRUCTION

Prior to the commencement of any demolition, excavation, or building work the following conditions in this Part of the Consent must be satisfied, and all relevant requirements complied with at all times during the operation of this consent.

45. Site Sign

- (a) A sign must be erected in a prominent position on site, prior to the commencement of construction:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work,
 - (ii) showing the name of the principal contractor (if any) or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- (b) Any such sign must be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

Reason: Statutory requirement.

46. **Residential building work – insurance.** In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

Reason: Statutory requirement.

47. **Residential building work – provision of information.** Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the PCA has given the Council written notice of the following information:

- (a) in the case of work for which a principal contractor is required to be appointed:
 - (i) the name and licence number of the principal contractor; and
 - (ii) the name of the insurer by which the work is insured under Part 6 of that Act.
- (b) in the case of work to be done by an owner-builder:
 - (i) the name of the owner-builder; and

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- (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If any of the above arrangements are changed while the work is in progress so that the information notified under this condition becomes out of date, further work must not be carried out unless the PCA for the development to which the work relates has given the Council written notice of the updated information (if Council is not the PCA).

Reason: Statutory requirement.

48. Excavation adjacent to adjoining land

- (a) If an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must, at their own expense, protect and support the adjoining premises from possible damage from the excavation, and where necessary, underpin the adjoining premises to prevent any such damage.
- (b) The applicant must give at least seven (7) days notice to the adjoining owner(s) prior to excavating.
- (c) An owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

Reason: To ensure notice is given to adjoining owners prior to excavation works.

49. Safety fencing. The site must be fenced prior to the commencement of construction, and throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.

Reason: To ensure site is safely secured.

50. Development to be within site boundaries. The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structure shall encroach onto the adjoining properties. Any doors/ gates on the boundary must be installed so they do not open onto any footpath.

Reason: To ensure development occurs within the site boundaries.

51. Property above/below Footpath Level. Where the ground level adjacent the property alignment is above/below the established verge and footpath level, adequate measures are to be taken (either by means of constructing approved retaining structures or batters entirely on the subject property) to support the subject land/footpath and prevent harm to the public / occupants of the site due to the abrupt level differences.

Reason: To ensure public safety.

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52. **Construction Traffic Management Plan.** As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by a Traffic Engineer having RMS accreditations and submitted to Council for approval prior to the issue of a Construction Certificate. This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent the site.

The CTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- Specify construction vehicle routes and rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council's Traffic section.
- Wherever the site is in proximity to a Public School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum seven (7) days notification must be provided to adjoining property owners prior to the implementation of significant temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street tree's.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – "Manual of Uniform Traffic Control Devices", RMS's Manual – "Traffic Control at Work Sites" and Councils DCP 2014 Part 8.1 (Construction Activities). The modification of parking restrictions (Work Zones) and standing heavy vehicles (crane, concrete pump, etc) on a footpath/ roadway are subject to separate approval from Council and/or the Local Traffic Committee.

All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and is to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

53. **Tree Retention.** As identified in the Arborist Assessment prepared by Arboreport dated 18/06/2019. The following trees on site or adjoining the site are to be retained and protected:

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Tree No.	Species "Common name"	Notes
1	Jacaranda mimosifolia Jacaranda	On adjoining property
5	Macadamia integrifolia Macadamia Nut	On site
6	Casurina glauca Swamp She-oak	In adjoining golf course
7	Melaleuca quinquenervia Broad Leafed Paperbark	In adjoining golf course
8	Acacia binervia (Coastal Myall)	In adjoining golf course
9	Eucalyptus melliodora (Yellow Box)	In adjoining golf course
10	Casurina glauca Swamp She-oak	In adjoining golf course
11	Acacia binervia (Coastal Myall)	In adjoining golf course
12	Casurina glauca Swamp She-oak	In adjoining golf course
13	Casurina glauca Swamp She-oak	In adjoining golf course

Reason: To identify trees required for retention.

54. **Tree Protection.** All tree protection works including installation of any fencing is to be undertaken prior to any demolition or site clearing works on site.

Reason: To ensure all trees to be retained are protected during works.

55. **Tree Protection Fencing.** All trees to be retained on site and on adjoining site are to have protective fencing and signage around TPZs and must be located in accordance with AS4970-2009: Protection of trees on development sites. In this regard, any fencing required to be constructed around the TPZ is to be in accordance with AS4687 Temporary fencing and hoardings.

Reason: To ensure the erection for tree protection fencing.

56. **Project Arborist.** A Project Arborist with minimum AQF level 5 qualifications is to be engaged to ensure adequate tree protection measures are put in place for all trees to be retained on adjoining allotments in accordance with AS4970-2009 Protection of trees on development sites. All trees are to be monitored to ensure adequate health throughout the construction period. Additionally, all work within the Tree Protection Zones is to be supervised by the Project Arborist throughout construction.

Reason: To ensure an arborist is onsite to ensure compliance with relevant Australian Standard.

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57. **Provision of Arborist details.** Council is to be notified, in writing, of the name, contact details and qualifications of the Project Arborist appointed to the site. Should these details change during the course of works, or the appointed Consultant Arborist alter, Council is to be notified, in writing, within seven working days.

Reason: To ensure an arborist is appointed and Council is notified.

DURING CONSTRUCTION

Unless otherwise specified, the following conditions in this Part of the consent must be complied with at all times during the construction period. Where applicable, the requirements under previous Parts of the consent must be implemented and maintained at all times during the construction period.

58. **Critical stage inspections.** The person having the benefit of this consent is required to notify the Principal Certifying Authority during construction to ensure that the critical stage inspections are undertaken, as required under clause 162A(4) of the *Environmental Planning and Assessment Regulation 2000*.

Reason: Statutory requirement.

59. **Survey of footings/walls.** Any footings and walls within 1 metre of a boundary must be set out by a registered surveyor. On commencement of brickwork or wall construction a survey and report must be prepared indicating the position of external walls in relation to the boundaries of the allotment.

Reason: To ensure all works are located on the subject site.

60. **Sediment/dust control.** No sediment, dust, soil or similar material shall leave the site during construction work.

Reason: To protect the environment and the amenity of surrounding properties.

61. **Use of fill/excavated material.** Excavated material must not be reused on the property except as follows:
- (a) Fill is allowed under this consent;
 - (b) The material constitutes Virgin Excavated Natural Material as defined in the *Protection of the Environment Operations Act 1997*;
 - (c) the material is reused only to the extent that fill is allowed by the consent.

Reason: To protect the environment.

62. **Construction materials.** All materials associated with construction must be retained within the site.

Reason: To ensure safety and amenity of the area.

63. Site Facilities

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The following facilities must be provided on the site:

- (a) toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
- (b) a garbage receptacle for food scraps and papers, with a tight-fitting lid.

Reason: Statutory requirement.

64. Site maintenance

The applicant must ensure that:

- (a) approved sediment and erosion control measures are installed and maintained during the construction period;
- (b) building materials and equipment are stored wholly within the work site unless an approval to store them elsewhere is held;
- (c) the site is clear of waste and debris at the completion of the works.

Reason: To ensure the site is appropriately maintained.

65. **Work within public road.** At all times work is being undertaken within a public road, adequate precautions shall be taken to warn, instruct and guide road users safely around the work site. Traffic control devices shall satisfy the minimum standards outlined in Australian Standard No. AS1742.3-1996 "Traffic Control Devices for Work on Roads".

Reason: To ensure works do not disrupt pedestrians and vehicular traffic.

66. **Tree Removal.** As identified in the Arborist Assessment prepared by Arboreport dated 3/06/2019. The following trees on site are to be removed:

Tree No.	Species "Common name"	Notes
2	Gordonia axillaris (Gordonia)	On site
3	Cupressus funebris (Chinese Weeping Cypress)	On site
4	Fraxinus sp. (Ash Tree)	On site

Reason: To identify trees approved for removal.

67. **Project Arborist Inspections.** The Project Arborist is to inspect and document with Certificates of Compliance to the certifying authority as stipulated in SECTION 5 MONITORING AND CERTIFICATION of AS4970-2009.

PROJECT PHASE	ACTIVITIES	PROJECT ARBORIST to
Initial Site Preparation	Establish/delineate TPZ Install protective measures and undertake soil	Project Arborist to mark Tree Protection Zones and install fences, mulch, irrigation and

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	rehabilitation for all trees to be retained.	signage Issue a Certification of Compliance of tree protection measures being in place and soil rehabilitation undertaken
Construction work	Liaison with site manager, compliance and any deviation from approved plan	Maintain or amend protective measures Supervision and monitoring formal notification of any deviation from approved tree protection plan
Stormwater connection installation through TPZ, Implement hard and soft landscape works	Supervise Installation of pipes within tree TPZ	Excavate trench through TPZ under Arborist supervision, install pipework, remove selected protective measures as necessary and perform remedial tree works Issue a Certificate of Compliance
Practical Completion	Tree vigour and structure Assessment and undertake soil rehabilitation for all retained trees	Remove all remaining tree Protection measures Certification of tree protection and soil rehabilitation for Protected Trees
Defects liability / maintenance period	Tree vigour and structure	Undertake any required remedial tree works Certification of tree protection if necessary

Reason: To ensure inspections are undertaken during works.

68. **Tree works – Australian Standards.** All tree work must be carried out by a qualified and experienced Arborist with a minimum of AQF level 3 in Arboriculture with NSW Work Cover Code of Practice for Amenity Tree Industry (1998) and AS4373 Pruning of amenity trees (2007).

Reason: To ensure works are undertaken by an arborist.

69. **Tree protection – no unauthorised removal.** This consent does not authorise the removal of trees unless specifically permitted by a condition of this consent or identified as approved for removal on the stamped plans.

Reason: To ensure that trees not approved for removal are retained.

70. **Tree protection – during construction.** Trees that are shown on the approved plans as being retained must be protected against damage during construction.

Reason: To ensure that trees not approved for removal are protected during works.

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71. **Drop-edge beams.** Perimeters of slabs are not to be visible and are to have face brickwork from the natural ground level.

Reason: Perimeter of slabs are not to be visible and are to have face brickwork from the natural ground level.

72. **Traffic Management.** Any traffic management procedures and systems must be in accordance with AS 1742.3 1996 and City of Ryde, Development Control Plan 2014: - Part 8.1; Construction Activities. This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

Reason: To ensure effective traffic management.

73. **Stormwater Management - Construction.** The stormwater drainage system on the site must be constructed in accordance with the Construction Certificate version of the Stormwater Management Plan by ALW Design Pty Ltd, drawing number SW18319 S1 to S5, revision DD, dated 20th February 2020, submitted in compliance to the condition labelled "Stormwater Management." and the requirements of Council in relation to the connection to the public drainage system.

Reason: To ensure effective stormwater management system is constructed.

74. **Stormwater Management – Works in the New Drainage Easement.** To ensure there is minimal imposition and loss of amenity to the owner/ occupants of the property burdened by the new drainage easement in construction of these drainage services, the builder/ developer must;
- (i) provide a minimum 3 weeks notification to the burdened property owner and occupants prior to the commencement of works in the neighbouring property.
 - (ii) ensure the works are completed in a timely manner.
 - (iii) ensure any structures adjacent the works are adequately supported at all times.
 - (iv) make provision to restore the work area so as to maintain the amenity of the land / minimise the imposition of works on the burdened land, should the works be delayed due to unforeseen events such as weather, service adjustments, etc.
 - (v) restore all areas on the burdened property disturbed by the construction works to a condition equivalent to the pre-developed state or otherwise as agreed by the owner of the burdened property.
 - (vi) comply with any terms agreed upon by both parties in regards to the construction of the drainage services and restoration of the land, in the granting of the easement.

Reason: To ensure there is minimal imposition and loss of amenity to the owner/ occupants of the property burdened by the new drainage easement

75. **Erosion and Sediment Control Plan - Implementation.** The applicant shall install erosion and sediment control measures in accordance with the Construction Certificate approved Soil Erosion and Sediment Control (ESCP) plan at the commencement of works on the site. Erosion control management procedures in accordance with the manual "Managing Urban Stormwater: Soils and Construction" by the NSW Department

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ATTACHMENT 2

- Office of Environment and Heritage, must be practiced at all times throughout the construction.

Reason: Protection of the environment.

76. **Construction Traffic Management Plan - Implementation.** All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. A copy of the approved CTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance with the submitted traffic management plan to minimise impacts.

77. **Drop-edge beams.** Perimeters of slabs are not to be visible and are to have face brickwork from the natural ground level.

Reason: Protection of visual presentation.

PRIOR TO OCCUPATION CERTIFICATE

An Occupation Certificate must be obtained from a Principal Certifying Authority prior to commencement of occupation of any part of the development, or prior to the commencement of a change of use of a building.

Prior to issue, the Principal Certifying Authority must ensure that all works are completed in compliance with the approved construction certificate plans and all conditions of this Development Consent.

Unless an alternative approval authority is specified (eg Council or government agency), the Principal Certifying Authority is responsible for determining compliance with conditions in this Part of the consent. Details to demonstrate compliance with all conditions, including plans, documentation, or other written evidence must be submitted to the Principal Certifying Authority.

78. **BASIX.** The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate(s) numbered 964743S_06 and 964743S_06, dated 7 July 2020.

Reason: Statutory requirement.

79. **Landscaping.** All landscaping works approved by condition 1 are to be completed prior to the issue of the final **Occupation Certificate**.

Reason: To ensure that the landscape works are consistent with the Development Consent.

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80. **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. A Section 73 Compliance Certificate must be completed before the issue of any Occupation Certificate. Sydney Water will assess the development and if required will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator.

Go to www.sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

Reason: Statutory Requirement.

81. **Public domain – work-as-executed plan.** A works as executed plan for any works carried out in the public domain must be provided to and endorsed by Council prior to the issue of any **Occupation Certificate**.

Reason: To ensure the integrity of works in the public domain.

82. **Letterboxes and street/house numbering.** All letterboxes and house numbering are to be designed and constructed to be accessible from the public way. Council must be contacted in relation to any specific requirements for street numbering.

Reason: To ensure consistency with Council's requirements for street numbering.

83. **Stormwater Management - Work-as-Executed Plan.** A Work-as-Executed plan (WAE) of the as constructed Stormwater Management System must be submitted with the application for an Occupation 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.

Reason: To demonstrate the stormwater management system has been constructed in accordance with the approval.

84. **Stormwater Management – Positive Covenant(s).** A Positive Covenant must be created on the property title(s) pursuant to the relevant section of the Conveyancing Act (1919), providing for the ongoing maintenance of the onsite detention components incorporated in the approved Stormwater Management system. This is to ensure that the drainage system will be maintained and operate as approved throughout the life of the development, by the owner of the site(s). The terms of the instrument are to be in accordance with the Council's standard terms for such systems and to the satisfaction of Council. The positive covenant must be registered on the title prior to the release of any Occupation Certificate for development works for which the system(s) serve.

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Reason: To ensure the title of the property represents the approved stormwater management system.

85. **Engineering Compliance Certificates.** Compliance Certificates must be obtained for the following items and are to be submitted to the Accredited Certifier prior to the release of any Occupation Certificate. All certification must be issued by a qualified and practising civil engineer having experience in the area respective of the certification unless stated otherwise.
- a) Confirming that all components of the parking areas contained inside the site comply with the relevant components of AS 2890 and Council's DCP 2014 Part 9.3 (Parking Controls).
 - b) In addition to the above, conforming the components of the permeable driveway area have been constructed in accordance with the approved plan approved under the deferred commencement condition regarding forward and entry exit to Lot 1.
 - c) Confirming that the constructed interallotment drainage system complies with the construction plan requirements and the Council's DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures.
 - d) Confirming that the Stormwater Management system (including any constructed ancillary components such as onsite detention) servicing the development complies with Council's DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures, and has been constructed to function in accordance with all conditions of this consent relating to the discharge of stormwater from the site.
 - e) Confirming that after completion of all construction work and landscaping, all areas adjacent the site, the site drainage system (including any on-site detention system), and the trunk drainage system immediately downstream of the subject site (next pit), have been cleaned of all sand, silt, old formwork, and other debris.
 - f) Confirming that erosion and sediment control measures were implemented during the course of construction and were in accordance with the manual "*Managing Urban Stormwater: Soils and Construction*" by the NSW Department – Office of Environment and Heritage and Council's DCP 2014 Part 8.1 (Construction Activities).
 - g) Compliance certificate from Council confirming that all external works in the public road reserve have been completed to Council's satisfaction.

Reason: To ensure that all engineering facets of the development have been designed and constructed to the appropriate standards.

86. **On-Site Stormwater Detention System - Marker Plate.** . The plate construction, wordings and installation shall be in accordance with Council's DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures. The plate may be purchased from Council's Customer Service Centre at Ryde Civic Centre (Devlin Street, Ryde).

Reason: To ensure the constructed On-site detention will not be modified, a marker plate is to be fixed to each on-site detention system constructed on the site

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OPERATIONAL CONDITIONS

The conditions in this Part of the consent relate to the on-going operation of the development and shall be complied with at all times.

87. **Single dwellings only.** Each approved dwelling is not to be used or adapted for use as separate domiciles or as a boarding house.

Reason: To ensure that the approved development is used in a manner that is consistent with this consent.

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ATTACHMENT 3



2 March 2020

Request for variation of a development standard pursuant to clause 4.6 of the Ryde Local Environmental Plan 2014 (RLEP).

The Development Application

The development application is for the construction of two new dwelling houses with associated car parking and landscaping, and a two lot, Torrens title subdivision, including access handle to the rear allotment, at 38 Wicks Road, North Ryde.

The Site

The property is a regular shaped allotment, with a width of 14.35m (minimum) and a length of 91.44m.

The property has an area of 1,309m² (by Deposited Plan).

The Variation Sought

The proposed development complies with all other development standards pertaining to the site, except for minimum allotment size for proposed Lot 1, as set out at clause 4.1C. There is a shortfall in the total site area of 129.6m².

Figure 5 in the SEE shows the general pattern of subdivision in the immediate locality, which demonstrates that the subject site is the only allotment within the immediate locality, on the western side of Wicks Road, that does not benefit from more than one dwelling on what was originally a single lot. The outcome demonstrates a consistent pattern of subdivision of land within the vicinity of the site which has allowed for increased residential density in this location, therefore promoting improved affordability and access to housing. This is of particular benefit given the extent of employment generating uses within the immediate vicinity of the site, particularly on the eastern side of Wicks Road, with hospital related facilities.

This Request will demonstrate that the variation sought meets the requirements of clause 4.6 and is appropriate for approval. Most importantly, it has a neutral impact on adjoining properties, such that the undersized allotment does not cause difficulty to adjoining properties, despite its smaller size. This has been achieved through a careful design approach, with all other matters compliant with the relevant development standards.



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While it cannot be argued that the development standard has been abandoned due to the dates upon which nearby properties were subdivided, it is clearly apparent that the proposal will have the same effect on the subject site as those which have occurred on neighbouring sites, such that the impacts are neutral. While on an undersized allotment, the capacity of infrastructure will not be compromised through one extra dwelling in what is a fairly dense urban context that is then visually alleviated by the golf course to the rear (west) of the site.

Figure 1: Dominant subdivision pattern on the western side of Wicks Road, including the subject site, as marked



Ryde Local Environmental Plan 2014

Clause 4.1(2) provides:

- (2) *This clause applies to a subdivision of any land shown on the [Lot Size Map](#) that requires development consent and that is carried out after the commencement of this Plan.*
- (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the [Lot Size Map](#) in relation to that land.*

The Lot Size, as shown on the relevant Map is 580m².

However, Clause 4.1C addresses Minimum Lot Size for Battle Axe Allotments and states that:

- (2) *This clause applies to land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone R4 High Density Residential other than land identified as North Ryde Station Precinct on the [Centres Map](#).*
- (3) *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.*



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ATTACHMENT 3

- (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.*

The subject site is located in the R2 Low Density Residential Zone; the proposed rear, Lot 2, will benefit from a battle axe handle and therefore must be 740m² in area. In addition, as demonstrated by the Plan of Subdivision accompanying this application, the access handle has been excluded from the calculation of the lot area. The proposed rear lot complies with the minimum lot size required by this clause.

Therefore, it is only clause 4.1(2) which is sought to be varied in accordance with clause 4.6 of the RLEP.

Clause 4.6 of the RLEP

Clause 4.6 of RLEP provides, so far as relevant:

- (1) The objectives of this clause are as follows:*
- To provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (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.*
- (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.*
- (4) 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.*
- (5) 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.*



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ATTACHMENT 3

Is minimum lot width a development standard?

Clause 4.6 can only be used to vary a control that is a development standard. Development standards are relevantly defined in s1.4 of the *Environmental Planning & Assessment Act 1979 (EP & A Act)* as follows:

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

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

(b) – (o)

Being a provision of the RLEP in relation to the carrying out of development, under which a requirement is fixed in respect to the minimum allotment size in the relevant zone, clause 4.1(2) of the RLEP is a development standard. Accordingly, clause 4.6 can be used to approve a variation of the standard.

As noted by the Chief Judge of the Land & Environment Court of NSW in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, [*Initial Action*], clause 4.6 is facultative in permitting a consent authority to grant consent for development even though that development would contravene a development standard imposed by an environmental planning instrument. However, clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Clause 4.6(4)

In order for the Court to grant a variation to the development standard under clause 4.6, it must be satisfied that:

1. the clause 4.6 Request adequately addresses the matters required by clause 4.6(3), namely that compliance with the standard is unnecessary or unreasonable in the circumstances of the case and secondly that there are sufficient environmental planning grounds to justify contravening the development standard; and
2. the proposed development will be in the public interest because it is consistent with the objectives of the standard and zone; and
3. the concurrence of the Secretary has been obtained.



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Clause 4.6(4)(a)(i) - Whether request adequately addresses requirements

This request is comprehensive in its discussion of whether compliance with the zone and objectives of the standard is unreasonable or unnecessary and whether there are sufficient environment planning grounds for varying the standard. Both issues are discussed below.

Clause 4.6(3)(a) Unnecessary or unreasonable

The common approaches for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. Cases such as *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Randwick Council v Micaul Holdings Pty Ltd* [2017] NSWLEC 7 and, most recently, *Initial Action*, have confirmed that adopting the Wehbe principles remains an appropriate approach.

The *Wehbe* approach provides a five-part test, which is reproduced below and considered having regard to this application:

The Five Part Test	Relationship to this Application
1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.	This is the case with respect to this application.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.	Not applicable
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.	Not applicable
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.	Not applicable
5. Compliance with the development standard is unreasonable or inappropriate due to the existing use of land and current environmental character of the parcel of land. That is, the	Not applicable



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particular parcel of land should not have been included in the zone.	
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The first option and applicable in this case, 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.

Set out below is an extract from the judgement in Wehbe that explains the rationale for adopting this approach in the context of clause 4.6.

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).

Compliance with the objectives of the minimum allotment size development standard is demonstrated in the table below. As is evident from this assessment, the proposal provides an alternative means for achieving the objectives of the development standard, such that there is no purpose served by requiring compliance with the minimum allotment size. This is particularly the case as the landholdings within the immediate vicinity of the site have all achieved the desired outcome that is sought for this allotment, without adversely impacting neighbouring properties. Therefore, to impose the standard would serve no purpose, assuming that there is no impact on adjoining properties.

4.1 Minimum subdivision lot size		
(1) The objectives of this clause are as follows:		
(a) to retain streetscape, amenity, landscaped areas and private open space in residential zones,	✓	The proposed development preserves the existing streetscape character of Wicks Road, with presentation of the same driveway composition as per the existing situation and a new dwelling to replace that currently on the lot. The scale of the dwelling is two storeys in height, below the development standard for height of buildings and compliant with the floor space ratio control. Existing landscaping to the street will be retained and improved upon, with both landscaped and deep soil areas exceeding the minimum



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		<p>requirements specified by the DCP for both of the proposed allotments. The same applies to the quantum of private open space proposed.</p> <p>Despite being undersized, the appearance of the development retains the visual composition of a single dwelling to the streetscape consistent with the appearance that is evident in the existing streetscape.</p> <p>This is furthered by the separation distance between the front and rear dwelling, such that any visibility of the rear dwelling, from the street, is set back a substantial distance, being 29.483m between the ground floor of the two building forms.</p> <p>This outcome ensures that, as a result of a skilled design outcome that achieves the desired amenity, landscaped area and private open space to both the site itself and neighbouring properties, the undersized allotment is of no consequence in terms of its impact, having regard to the objective of the standard. The end outcome results in the appearance of a traditional dwelling house on a traditional lot, which is a desirable outcome within the low density residential zone and consistent with the street composition.</p> <p>Therefore, the size of the undersized allotment achieves this objective, which accords with the desired character of the area despite being undersized.</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>Despite being an undersized allotment, open space is provided in accordance with the relevant planning controls thus not resulting in an outcome that would otherwise deprive the embellishment of green linkage corridors in residential zones. Given that the required amount is able to be achieved across the undersized allotment, the proposal provides a positive contribution to such corridor, thus achieving the desired objective.</p>



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		<p>Further, the Arborist Report pertaining to this application demonstrates the ability to retain and embellish green corridors, despite non-compliance with the development standard. As a result of the redevelopment of the site, landscaping on the site is increased in material quality to the extent that this would unlikely be achieved if the property were not redeveloped.</p> <p>The other key point to redevelopment of this site is that the outcome provides for a higher quantum of open space area than if the site were redeveloped for a dwelling house. If the development standard for floor space was applied, this would result in a maximum floor space of 654.5m². The proposed development has a floor space of 550.39m² and is therefore approximately 114m² less in area than what may be achieved if the allotment were retained with a single dwelling.</p> <p>The benefit of this is that there is also a material increase in open space that may be permitted on the site. If the site were retained as a single allotment, the requirement for deep soil planting is 35% of the site area; this would therefore require 458.15m². The proposed development provides 544.78m² in deep soil planting which is substantially more than that required.</p> <p>Therefore, the proposal exceeds to expectation of this objective in terms of its contribution to green corridors within the immediate locality.</p>
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Further, consideration of the Objectives of the R2 Low Density Residential zone is also relevant for the purpose that, by imposing the development standard has no effect that would otherwise benefit the site or the locality; the proposal instead seeks to uphold the objectives of the zone, as set out below.

Zone Objective	Compliance	Comment
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To provide for the housing needs of the community within a low density residential environment	✓	<p>The proposed development is a low-density response with two separate dwellings proposed on allotments consistent with the nature of development within the immediate vicinity of the site.</p> <p>Most importantly, the development proposed on the undersized allotment provides a density of development that does not exceed the intended floorspace capacity having regard to the site area and thus compliant with that specified of 0.5:1. This ensures that the character of the development, despite being on an undersized allotment, does not place undue pressure on the intended density of the proposed allotments, nor within the context of a low density residential environment.</p> <p>As detailed above, the proposal also provides a total floor space that is less than if it were developed for a single dwelling house, thus promoting a low density residential environment more so than a traditional dwelling arrangement.</p>
To enable other land uses that provide facilities or services to meet the day to day needs of residents	✓	The proposed development is for residential purposes only.
To provide for a variety of housing types	✓	<p>The proposed development is for two single dwelling houses, consistent with the desired low-density residential nature of development that is sought after in this zone.</p> <p>The dwellings are of different sizes to ensure that a variety in product is achieved, as well as responding to market and end user conditions that are desired for the site.</p> <p>The variety is also embedded in the design, with the streetscape context of the proposal enhancing local character, by having one dwelling located behind the other so as not to 'clutter' the streetscape appearance and retain the approach for single dwelling houses to prevail to the street frontage.</p>

The application demonstrates consistency with the objectives of the R2 Low Density Residential zone and with the minimum lot size objectives. Adopting Preston CJ's language in *Wehbe*, development standards are means to an end, not ends in themselves. The application will comprehensively achieve all of the objectives



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of the lot size development standard and the R2 zone notwithstanding the lot area non-compliance for proposed Lot 2.

The proposal achieves all other development standards applying to the site, as well as the requirements of the Ryde Development Control Plan 2014 (RDCP), in particular as it relates to side design, setbacks, landscaped area, site coverage and so forth. Therefore, the proposal demonstrates full consistency with the intended outcomes for the site, despite non-compliance with the standard. The proposal is comprehensive and will improve the environmental conditions of the site, through aspects such as additional landscaping, that would not be achieved in absence of supporting this application. Therefore, compliance with the standard is therefore unreasonable and unnecessary and results in a detrimental outcome compared to a development where the variation to the lot size is permitted.

Further, and as stated above, by imposing compliance with the development standard serves no purpose when the adjoining parcels of land have already effected the proposed arrangement. While historical in their approval, If anything, approving this application, despite non-compliance with the minimum lot size ensures that the use of this allotment is more closely consistent with the zone objectives, than if it were left in its current form. As such, it is unreasonable to require compliance with this development standard.

Clause 4.6(3)(b) – Sufficient environmental planning grounds

The second element of clause 4.6(3) on which the Court must be satisfied is that there are sufficient environmental planning grounds to justify contravening the development standard.

The environmental planning grounds relate to the subject matter, scope and purpose of the *Environmental Planning & Assessment Act [EP&A Act]* including the objects of the EP&A Act (*Wehbe* para 23).

As Preston CJ explains in *Wehbe*:

“.. the focus of clause 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole. Second the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under clause 4.6(a)(i) that the written request has adequately addressed the matter.”

The requested variation consists of a shortfall in the lot size. This Request demonstrates that the variation sought will have an improved environmental planning outcome compared to the request not being allowed



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with no adverse environmental or other impacts and that all of the zone and standard objectives will be met, or exceeded, notwithstanding the variation.

As detailed above, the better environmental planning outcome is acceptance of this proposal which results in a lesser amount of floor space and a greater proportion of landscaped area on the site than if it were redeveloped as a single dwelling on a single allotment. The increased landscaped area is material to ensure that the green linkages within the vicinity of the site may be increased, thus improving environmental performance.

In addition, as demonstrated in the SEE, the proposal:

- Complies with, and is less than, the permitted building height.
- complies with the maximum permitted FSR on the allotment, and is less than that which could be achieved if a single dwelling were proposed.
- Proposes an extent of landscaping and deep soil planting that significantly exceeds the required proportion of the allotment and, again is greater than that which would be provided if the site were redeveloped with a single dwelling house.
- Complies with the required setback distances from front, side and rear boundaries.

Therefore, but for the allotment size, the proposal does not seek to overdevelop the site as there is no more floor space proposed than that permitted by the development standard and other aspects, such as landscaping and deep soil planting, are over and above the specified requirement. They are also less, and more than, respectively, than if the site were redeveloped with a single dwelling house. By creating this outcome ensures that a dwelling of a domestic scale presents to the streetscape and is not the dominant building form in the vicinity of the site. This can be accommodated on the undersized allotment thus resulting in sufficient grounds to vary the development standard.

The outcome is, instead, consistent with built form on the adjoining allotments, which have all, similarly undertaken further subdivision of the allotments to create an affordable form of housing. The architectural plans demonstrate that a dwelling can be comfortably achieved that complies with the requirements, without intruding upon the amenity of adjoining properties.

The proposal also provides an opportunity for low density residential development to service local accommodation needs, particularly given the site's proximity to health and medical facilities. It will also result in a material improvement to the natural setting over the current situation with new landscaping treatment that which will not only benefit the site, but will ensure consistency with the pattern of subdivision on the adjoining allotments. Without this variation, such improvements to the natural setting would not be achieved, as sought by both objectives of the development standard and objectives of the zone.



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Allowing the variation produces a better environmental and planning outcome by more efficiently utilising this site, which is currently enjoyed by only one household. The outcome will aid the natural qualities of the setting and improve the interface with the adjoining allotments. This outcome will accord with the zone objectives, as well as reinforce the public interest aspect associated with the development.

It would be unreasonable and unnecessary, in particular serve no purpose, for the application for a 2-lot subdivision to comply with the lot size development standard in the circumstances of this case, as:

- the proposed lot exceeds the minimum required area for landscaping
- the proposed dwelling can comfortably achieve the permitted FSR and be suitably positioned to reduce any potential impact on neighbouring properties
- the proposal satisfies all other key requirements of the RLEP 2014
- the proposal does not result in any unreasonable environmental impacts
- to require compliance with the numerical standard for lot size is unreasonable
- the proposal is consistent with the objectives of the minimum lot size for subdivision as contained at clause 4.1(2) of the RLEP
- the proposal is consistent with the objectives of the R2 Low Density Residential zone
- strict compliance would result in an outcome that is inconsistent with the development pattern in the immediate vicinity of the site, which can otherwise occur without adverse impact on neighbouring properties
- the better environmental planning outcome is to allow the variation thus enabling creation of a new dwelling to improve housing affordability within the locality, in a manner that has been consistently applied in the vicinity of this site, for two (or more) separate dwellings.

Strict compliance with the control would produce an adverse environmental planning impact and the requested variation has the positive environmental planning outcomes referred to in this Request. It is therefore considered that there are sufficient environmental planning grounds to justify departure from the development standard. In addition, the proposed variation does not raise any matters of State or regional environmental planning significance and there is no public benefit to maintain the lot size development standard in the circumstances of this case, particularly given the character of development within the vicinity of the site, which this proposal is consistent with.

With respect to clause 4.6(4)(a)(i), the Court as consent authority can be satisfied that this request for variation has adequately addressed the matters required to be addressed by clause 4.6(3) namely:

- 4.6(3)(a)- that compliance with the standard is unreasonable and unnecessary in the circumstances of this case; and



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- 4.6(3)(b) – that there are sufficient environmental planning grounds to justify contravening the development standard.

The fourth element that the Court needs to be satisfied with in order to vary the development standard is that the proposed development will be in the public interest if the standard is varied because it is consistent with the standard's and zone's objectives.

Preston CJ in *Initial Action* (para 27) described the relevant test for this requirement as follows:

"The matter in cl 4.6(a)(ii) with which the consent authority or the Court on appeal must be satisfied is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purpose of clause 4.6(4)(a)(ii)."

As demonstrated in this Request, the proposed development will comprehensively meet all of the objectives of both the lot size development standard and the R2 zone and is therefore consistent with the objectives of the standard and the zone. Accordingly, the consent authority can be satisfied that it is in the public interest to vary the standard for the purpose of this development application. In terms of the setting, the public interest will provide a consistent visual outcome, in terms of urban density that is represented in the street and will improve access to affordable housing despite non-compliance with the development standard. Variation of the lot size standard has no adverse impacts, and sufficiently allows for all other planning controls to be achieved on the undersized allotment, therefore minimizing environmental impact, impact to neighbouring properties and therefore will result in a better environmental planning outcome in producing two lots with no adverse impacts. It will also result in a density of development that is below the expectation of a single dwelling house on one allotment of land. The flexibility enabled by clause 4.6 will, in this case, produce a neutral, if not, better environmental planning outcome than would result from strict compliance.

Secretary's concurrence

By Planning Circular dated 21 February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume concurrence to clause 4.6 requests except in the circumstances set out below:

- Lot size standards for rural dwellings



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- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The Circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP processes and determinations are subjected to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

