

Meeting Date: Thursday 14 October 2021
Location: Held remotely
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 APPLICATION

- 2** LDA2021/0183
20 Wentworth Road, Eastwood
Torrens title subdivision of land into 2 lots to include a battle-axe lot. **3**

DEVELOPMENT APPLICATION

- 2 LDA2021/0183**
20 Wentworth Road, Eastwood
Torrens title subdivision of land into 2 lots to include a battle-axe lot.

Report prepared by: Senior Town Planner

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

File Number: GRP/09/6/12/1/2 - BP21/920

City of Ryde
Local Planning Panel Report

DA Number	LDA2021/0183
Site Address & Ward	20 Wentworth Road, Eastwood Lot 17 DP 7336 West Ward
Zoning	R2 Low Density Residential under Ryde LEP 2014
Proposal	Torrens title subdivision of land into 2 lots to include a battle-axe lot
Property Owners	James Xian
Applicant	Nigel White
Lodgement Date	2 June 2021
No. of Submissions	1 objecting to the development
Cost of Works	\$41,800.00
Report Author	Holly Charalambous, Senior Town Planner
Report Date	16 September 2021
Reason for Referral to Local Planning Panel	Departure from Development Standard by more than 10% in relation to Clause 4.1C Minimum lot size for battle-axe lots under Ryde LEP 2014.
Recommendation	Approval

ITEM 1 (continued)

Attachments	<ol style="list-style-type: none">1. Draft conditions of consent2. Applicant's clause 4.6 written request to vary clause 4.1(3) Minimum subdivision lot size and clause 4.1C(3) Minimum lot size for battle-axe lots3. Proposed subdivision plan & stormwater drainage plan
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1. Executive Summary

The proposal is for Torrens title subdivision of the land into 2 lots to include a battle-axe lot at 20 Wentworth Road, Eastwood.

The proposed lots do not satisfy the minimum lot sizes required by Ryde Local Environmental Plan (LEP) 2014. Proposed Lot 1 has an area of 540m² which results in a shortfall of 40m² or 7% as required by Clause 4.1 Minimum subdivision lot size. Proposed Lot 2 has an area of 641.8m² (excluding the 3m wide access handle and 747.8m² including the access handle). This lot results in a shortfall of 98.2m² or 13% as required by Clause 4.1C Minimum lot size for battle-axe lots.

The applicant has submitted a written justification seeking an exception to the above development standards under Clause 4.6 of Ryde LEP 2014. The request satisfactorily addresses the jurisdictional prerequisites required to satisfy the consent authority. The variation sought to the standard is considered to be satisfactory.

One submission was received as a result of the public notification of the DA objecting to the proposal with regard to privacy, solar access, overshadowing and amenity. The objection is not considered sufficient to warrant the refusal of the DA.

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

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

This report recommends that the Panel support the use of Clause 4.6 to vary the development standards in this instance and approve the application subject to the recommended conditions at **Attachment 1**.

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2. The Site and Locality

The site is legally described as Lot 17 in Deposited Plan 7336 and has a street address of 20 Wentworth Road, Eastwood. The site has an area of 1,287m² and is a large regular shaped lot with a street frontage to Wentworth Road of 18.29m and a depth of 70.41m. The site has a cross-fall that slopes from the northern (rear) corner of the site to southern (front) corner of the site by up to 5.6m. An aerial photo of the site is at **Figure 1**.

The site currently accommodates a part single-part 2 storey brick dwelling with driveway access along the southern boundary. The rear private open space area is grassed and there is 1 centrally located tree and 5 trees along the rear boundary of the site as shown in **Figure 2**. There are retaining structures along the rear and side boundaries due to the slope of the land in the general area, including cut rock. Photos of the site are at **Figure 3**.

Surrounding properties also feature battle-axe lots with dual driveways, such as 22 & 22A Wentworth Road to the south, 16 & 16A Wentworth Road to the north, 35 & 35A Wentworth Road to the north-west and 82 & 82A Tarrants Avenue to the east. A 2 storey multi dwelling housing development is located to the north at 18 Wentworth Road. These dwellings are setback 3.5m from the common boundary. Lynn Park is located further to the south and is heavily vegetated.



Figure 1: Aerial photograph of the site (outlined in orange). Surrounding properties also feature battle-axe lots with dual driveways, such as 22 & 22A Wentworth Road to the south, 16 & 16A Wentworth Road to the north, 35 & 35A Wentworth Road to the north-west and 82 & 82A Tarrants Avenue to the east. A 2 storey multi dwelling housing development is located to the north at 18 Wentworth Road.

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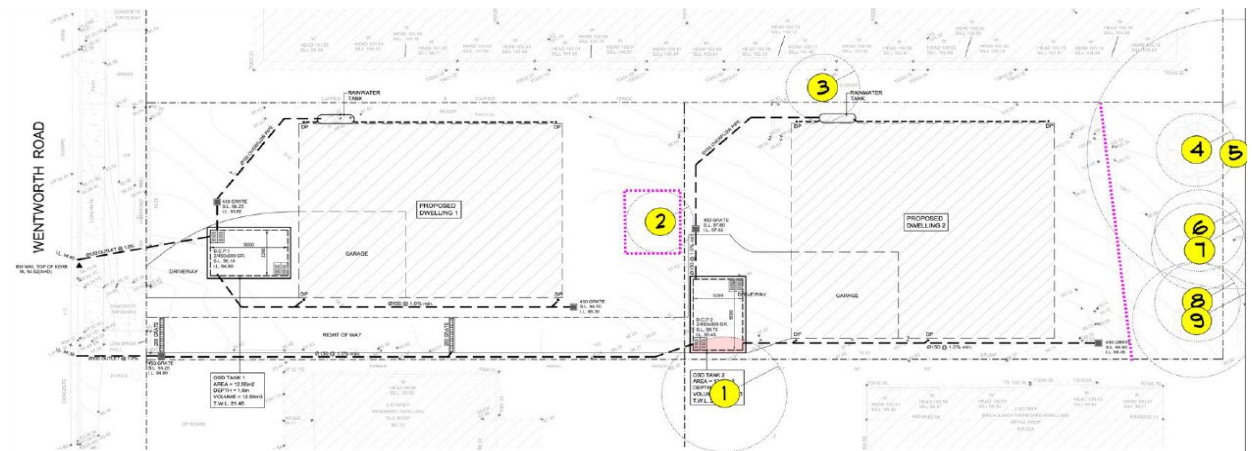


Figure 2: Extract from the Arboricultural Impact Assessment submitted with the DA identifying the location of trees on the site and neighbouring properties.



Existing dwelling on site as viewed from Wentworth Rd.



Existing dwelling & rear private open space area as viewed from rear fence.



Rear private open space area & existing trees.
Townhouses at 18 Wentworth Rd shown on the left.



Rear private open space area & existing trees. Dwelling
at 22A Wentworth Rd shown on right.

Figure 3: Photos of the subject site and neighbouring properties.

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3. The Proposal

The proposal is for Torrens title subdivision of the land into 2 lots to include a battle-axe lot at 20 Wentworth Road, Eastwood. The proposed plan of subdivision is shown at **Figure 4** below and **Attachment 3**.

The applicant has advised that demolition of the existing dwelling and the construction of new dwellings on each new lot will be the subject of separate Development Applications (DAs) (or potentially complying development certificates). There are no trees or vegetation sought to be removed in this DA.

Proposed Lot 1 fronts Wentworth Road and has a site area of 540m² and a frontage of 15.29m. Proposed Lot 2 is located at the rear of the site and is a 'battle-axe' lot with an area of 747.8m² (641.8m² excluding the 3m wide access handle).

The site currently slopes from the rear boundary to the street frontage and drainage is connected to Council's stormwater collection infrastructure. This connection is proposed to be maintained for the proposed lots.

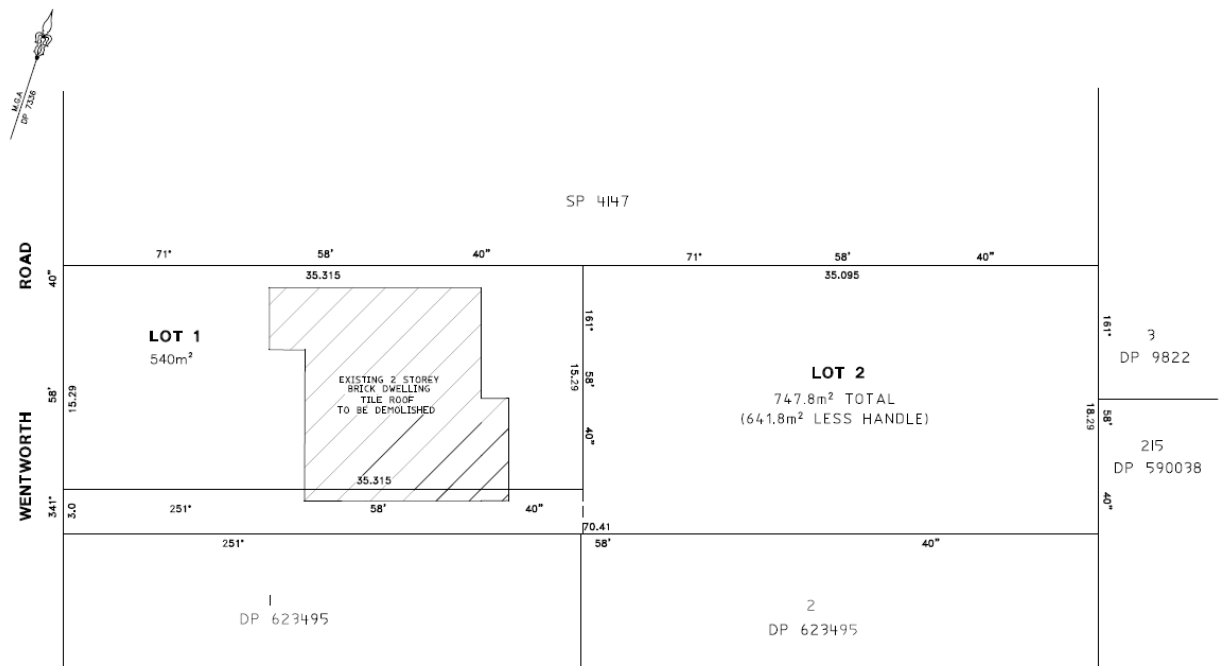


Figure 4: Extract of the Plan of Proposed Subdivision.

The DA is accompanied by a Potential Building Footprints Plan which is shown at **Figure 5** below. This plan demonstrates that proposed Lots 1 and 2 are capable of each being redeveloped to accommodate a new dwelling, private open space and vehicular access and parking arrangements in line with the development controls in the Ryde Development Control Plan (DCP) 2014.

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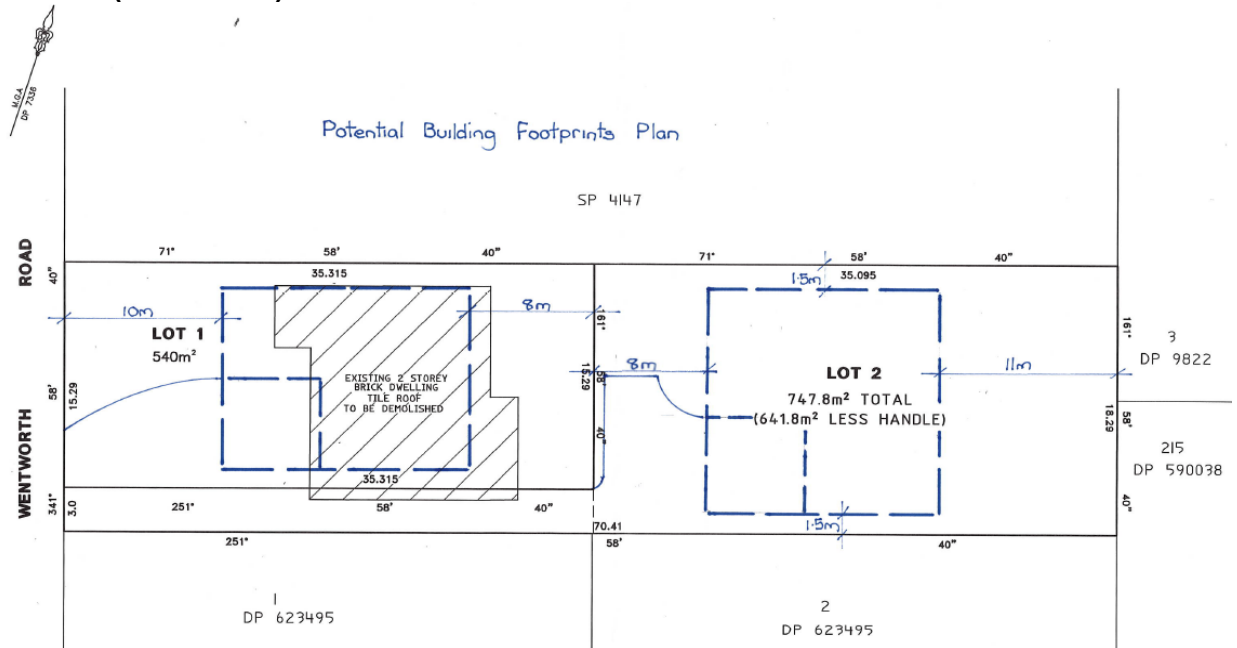


Figure 5: Extract of the Potential Building Footprints Plan (the potential building footprints, driveways and setbacks are marked in blue).

This application is for Torrens title subdivision of the site only. The applicant is required to obtain separate development consent for the demolition of the existing dwelling. Council's Senior Development Engineer also requires the applicant to construct the drainage system and full length of the driveways to Lots 1 and 2 prior to the issue of any Subdivision Certificate.

It is noted that approval for future dwellings on each proposed lot can potentially be obtained via Complying Development Certificates.

4. Application History

2 June 2021	This DA was lodged.
4 to 25 June 2021	The DA was notified to the owners of surrounding properties. In response, 1 submission was received objecting to the development application.
14 July 2021	Council sent a request for additional information to the applicant. Issues raised included concerns regarding vehicular access and stormwater drainage. The applicant was also requested to address the issues raised in the public submission.
28 July 2021	The applicant submitted amended plans and information that have adequately addressed the concerns raised.

ITEM 1 (continued)**5. Planning Assessment**

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

5.1 State Environmental Planning Instruments**State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land**

Clause 7 of SEPP No. 55 – Remediation of Land 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 historically been used for residential purposes. This application does not include any demolition, tree removal or construction works. As such, it is unlikely to contain any contamination and further investigation is not warranted in this case. It is considered that the site satisfies the requirements of the SEPP with regard to the proposed subdivision.

SEPP (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)

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 site is mapped as containing endangered urban bushland on Council's Environmentally Sensitive Areas map. The DA is accompanied by an Arboricultural Impact Assessment prepared by Advance Treescape Consulting, dated 21 May 2021, which identifies that the site does not contain any significant trees. The trees that are within the mapped area consist of 1 Illawarra Flame tree and 4 Cypress trees. These trees are not endangered urban bushland.

In addition, this DA does not seek to remove any existing trees or vegetation on the site. This application has also demonstrated that the future redevelopment of the lots for new dwelling houses is capable of being constructed in a manner that does not require the removal of any existing trees on the site or surrounding properties.

The proposal has been considered by Council's Landscape Architect, and no objection is raised. 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

Given the nature of the project and the location of the site, there are no specific controls that directly apply to this proposal. The objective of improved water quality is satisfied as the Concept Stormwater Plans that accompany the DA demonstrate

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compliance with Part 8.2 Stormwater Management of Ryde Development Control Plan 2014.

5.2 Draft Environmental Planning Instruments

Draft Remediation of Land State Environmental Planning Policy (SEPP)

The Draft Remediation of Land 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 No. 55 – Remediation of Land assessment above, the site has historically been used for residential purposes. This application does not include any demolition, tree removal or construction works. As such, it is unlikely to contain any contamination and further investigation is not warranted in this case.

Draft Environment SEPP

The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018 and proposes to simplify the planning rules for a number of water catchments, waterways and urban bushland areas. Changes proposed include consolidating SEPP No. 19 – Bushland in Urban Areas and Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. As discussed earlier in this report, the proposal does not result in the removal or any adverse impact on the trees on the site or adjoining properties. As such, the proposal is consistent with the provisions of the draft SEPP.

5.3 Ryde Local Environmental Plan (LEP) 2014

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

Ryde Local Environmental Plan 2014	
Objectives of the R2 Low Density Residential zone	How the proposal achieves the objective
a. To provide for the housing needs of the community within a low density residential environment.	The proposal creates 2 residential lots that are capable of responding to the housing needs of the community.
b. To enable other land uses that provide facilities or services to meet the day to day needs of residents	Not applicable.
c. To provide a variety of housing types	The proposal creates 2 residential lots that are capable of accommodating new dwelling houses.

ITEM 1 (continued)

Ryde LEP 2014 Clause	Proposal	Compliance
2.6 Subdivision requires consent	The proposal is seeking consent for a Torrens title subdivision for which Council may issue development consent under this clause.	Yes
4.1 Minimum subdivision lot size: 580m²	Proposed Lot 1 would have a site area of 540m ² , being a shortfall of 40m ² or 7%.	No, Clause 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 740m ² .	Proposed lot area for Lot 2: 641.8m ² , being a shortfall of 98.2m ² or 13%.	No, Clause 4.6 variation request submitted.
(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 area of the access handle (106m ²) has been excluded from site areas of proposed allotments.	Noted.
4.3(2) Height of Buildings: 9.5m	Capable of being satisfied in a separate DA/s for dwellings.	Capable of being satisfied.
4.4(2) Floor Space Ratio: 0.5:1	Capable of being satisfied in a separate DA/s for dwellings.	Capable of being satisfied.
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.	Variations sought to: - Clause 4.1 Minimum subdivision lot size - Clause 4.1C Minimum lot size for battle-axe lots.	Refer to discussion below.
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.	Minor earthworks are proposed to accommodate the construction of the driveways and stormwater drainage works. Future DAs for demolition, earthworks and construction of a dwelling on each new lot will also address this clause.	Yes
6.4 Stormwater Management (1) The objective of this clause is to minimise the impacts of urban stormwater	The DA is accompanied by Concept Stormwater Plans that demonstrate compliance with	Capable of being satisfied.

ITEM 1 (continued)

on land to which this clause applies and on adjoining properties, native bushland and receiving waters.	Part 8.2 Stormwater Management of Ryde DCP 2014. Refer to Attachment 3 . Council's Development Engineer is satisfied with the proposed drainage arrangement, which will be addressed in detail in future DAs for new dwellings on each new lot.	
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Clause 4.6 – Exceptions to Development Standards

The applicant seeks to vary the following Development Standards:

Development Standard	Minimum lot site	Proposed Lot Size	Variation
Clause 4.1 Minimum subdivision lot size	580m ²	540.0m ²	40.0m ² or 7%
Clause 4.1C (3) Minimum lot size for battle-axe lots	740m ²	641.8m ²	98.2m ² or 13%

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

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

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

- Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives?
- Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary?
- Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?
- Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?

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- Is the ‘*zoning of particular land*’ unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land? Consequently compliance with that development standard is unnecessary and unreasonable.

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

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

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

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

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

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant’s request provides reasons why compliance with the standard is unreasonable and/or unnecessary, with relevant excerpts shown below:

- i. The development proffers alternative means of achieving the objectives of the lot size standard by providing an acceptable residential character without comprising the amenity of the surrounding area in terms of visual impacts and solar access.*

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As the development proffers alternative means of achieving the objectives of clause 4.1 and 4.1C, strict compliance is unnecessary.

- ii. The existing allotment is a significant large allotment with a reasonable width and is readily capable of being adequately subdivided to provide 2 reasonable sized building allotments. The existing site is close to public transport, Eastwood shops and railway station and the subdivision is consistent with the principles of urban consolidation.*
- iii. The immediate precinct has a varied range of allotment sizes and the adjoining southern site has a similar subdivision. The proposed subdivision would not detract from the residential character of the locality and will lead to the provision of quality additional housing.*
- iv. Considerations relating to overshadowing or privacy can be reasonably resolved through good design on both proposed lots. Compliance with setbacks can also be achieved.*
- v. Both lots will benefit from exceptional exposure to direct sunlight.*
- vi. All utility services are available to the site and no trees are required to be removed to facilitate the proposed subdivision.*
- vii. A suitable level building platform and areas of private open space can be provided for both lots utilising all aspects of the available land.*

Assessing Officer's comments:

In this particular circumstance, the site is capable of being subdivided to create a battle-axe lot in a manner which comfortably accommodates a new dwelling in each lot with suitable access and private open space. This can be achieved whilst also maintaining all existing trees on the site. Permitting the variation will more effectively utilise the site.

Despite the subdivision lot size variation, the proposed subdivision and subsequent construction of a new dwelling on each lot are capable of obtaining a high level of compliance with applicable development standards and controls. Therefore, the proposed subdivision will not detract from the residential character of the street and broader area, which also consists of a similar subdivision pattern.

It is noted that 16A Wentworth Road is also a battle-axe lot located to the north of the site which accommodates a detached dwelling. The site area of No. 16A is 723.42m² (excluding the battle-axe handle). This is a shortfall of 16.58m² or 2.24% according to clause 4.1C Minimum lot size of battle-axe lots of the Ryde LEP 2014. Similar to this example of No. 16A, it is agreed that permitting the variation will more effectively utilise the site in a manner which is cohesive with the subdivision pattern of the immediate locality.

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

- i. *In this particular case the variation from the lot size standards does not impact on the ability to accord with all other development standards and controls.*
- ii. *Strict compliance with setbacks, building height and landscaping can be met in this instance.*
- iii. *The proposed subdivision will not be intrusive and will sit well within its setting surrounding the site.*
- iv. *Despite the lot size variation, a compliant building height and a consistent front setback can be achieved facilitating the orderly and economic development of the land.*
- v. *In addition, there are no adverse amenity impacts arising, which would adversely affect existing residential amenity. The social and economic welfare of the local community will be maintained.*
- vi. *The proposal delivers affordable housing and avoids the sterilisation of a valuable parcel of land.*
- vii. *The proposal does not give rise to impacts on local heritage, flora and fauna.*
- viii. *Contemporary built form can be generated which contributes to the streetscape and built environment consistent with the zone objectives.*

The applicant's written request has been carefully reviewed and is considered to satisfy the matters required by Clause 4.6(3). In light of the particular circumstances of this case, the proposed subdivision is a compatible form of development in this context, and it reflects the progressive subdivision pattern of surrounding land. Despite failing to provide the minimum required lot size, the proposed lots feature depths which provide sufficient access and private open space area and are capable of accommodating new dwellings that are consistent with the applicable development standards and controls.

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 is as follows:

Ryde Local Environmental Plan 2014	
Objectives of the R2 Low Density Residential zone	How the proposal achieves the objective
a. To provide for the housing needs of the community within a low density residential environment.	The proposal creates 2 residential lots that are capable of responding to the housing needs of the community which are consistent with the low

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	density characteristics of this residential environment.
b. To enable other land uses that provide facilities or services to meet the day to day needs of residents	Not applicable.
c. To provide a variety of housing types	The proposal creates 2 residential lots that are capable of accommodating new dwelling houses.

Therefore, the proposal is in the public interest because the development is consistent with the objectives for development within the zone.

Ryde Local Environmental Plan 2014	
Objectives of Clause 4.1 'Minimum subdivision lot size'	How the proposal achieves the objective
a. To retain streetscape, amenity, landscaped areas and private open space in residential zones.	The DA is accompanied by a Potential Building Footprints Plan which is shown at Figure 5 above. This plan demonstrates that proposed Lots 1 and 2 are capable of each being redeveloped to accommodate a new dwelling, private open space and vehicular access and parking arrangements in line with the development controls in the Ryde DCP 2014. The site will maintain its appearance as a single dwelling house as viewed from the street, similar to neighbouring properties in the immediate vicinity.
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 accompanying Potential Building Footprints Plan (Figure 5) demonstrates that both lots are afforded sufficient and appropriate areas of open space. In particular, the existing trees along the rear boundary are to be retained and will maintain the corridor of trees in this area.
Objectives of Clause 4.1C 'Minimum lot size for battle-axe lots'	How the proposal achieves the objective
a. To maintain visual amenity and character of the land to which this clause applies.	The proposed battle-axe lot and the size of the proposed lots are in keeping with the subdivision pattern in the immediate area. The proposed lots are compatible with the existing visual amenity and character of the land.
b. To retain the residential amenity of that land by providing suitable landscaped areas and vehicular access.	The accompanying Potential Building Footprints Plan (Figure 5) demonstrates that proposed Lots 1 and 2 are capable of each being redeveloped to accommodate a new dwelling that retains the residential amenity of the site and surrounding properties and achieves suitable landscaped areas and vehicular access in line with the development controls in the Ryde DCP 2014.

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

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

There is no identified outcome which would raise any matter of significance to planning matters of State or regional environmental planning that cannot be dealt with by the Sydney North Planning Panel as a result of varying the development standards as proposed under this application.

When compared to providing a development which strictly complies with the minimum lot size development standards, this application offers a public benefit because it provides additional housing opportunities that is consistent with the existing subdivision pattern in the immediate vicinity. The proposal offers improved outcomes for and from development by allowing flexibility in this particular circumstance. Therefore, there is no public benefit in maintaining strict compliance with the development standard in this instance. On this basis, Concurrence of the Planning Secretary is assumed by the Panel in accordance with Clause 4.6(4)(b) and 4.6(5).

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

5.4 Ryde Development Control Plan (DCP) 2014

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

Part 3.3: Dwelling Houses and Dual Occupancy (Attached)		
Section 2.4 Subdivision		
DCP Control	Proposal	Compliance
a. i. Where subdivision of land is proposed, each lot (other than a hatchet shaped lot) must have an area of not less than 580m ² .	Lot 1 has an area of 540m ² .	No, variation of 40m ² or 7%.
b. i. Each hatchet shaped lot must have an area of not less than 740m ² (not including the access corridor and any part of the lot that is intended for access to other lots).	Lot 2 has an area of 641.8m ² .	No, variation of 98.2m ² or 13%.

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

It is noted that this application does not include demolition, removal of trees or construction of dwellings. The applicant will submit separate DAs for these works,

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which will be required to address the development controls in Ryde DCP 2014, including:

- 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
- Part 8.3: Driveways.

Subject to future DAs, the applicant will be required to demonstrate that proposed Lots 1 and 2 are capable of accommodating dwellings which fully comply with the minimum requirements for floor space ratio, height, setbacks, car parking and access, landscaping, deep soil area and private open space. Furthermore, the detailed design of the future dwellings is required to address the development controls relating to dwelling amenity, with particular regard to daylight and sunlight access, visual privacy and acoustic privacy. This includes preventing adverse amenity impacts on neighbouring properties. If it is intended to submit a complying development certificate, the applicant will be required to demonstrate that the development meets all of the requirements under the SEPP.

The proposed lot sizes are supported given they are in keeping with the subdivision pattern in the immediate area and the future redevelopment of each lot is capable of achieving the desired future character of this low density residential area.

5.5 Section 7.11 Development Contributions Plan 2020

Council's current Section 7.11 Development Contributions Plan 2020 (effective 1 July 2020) requires a monetary contribution where a DA results in a net increase in residents on the land. The purpose of this is to fund a range of urban improvement and economic infrastructure projects.

The proposal seeks to increase the number of lots from 1 to 2.

The contributions that are payable with respect to the additional house lot (being for residential development outside the Macquarie Park Area) are as follows:

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

This contribution is included in the recommended conditions of consent at **Attachment 1. See Condition 30.**

ITEM 1 (continued)**5.6 Planning Agreements**

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

5.7 Matters Prescribed by the Regulations

The proposal is consistent with the *Environmental Planning and Assessment Regulation 2000*. Demolition is not proposed in this application.

6. The likely impacts of the development

It is considered that the likely impacts of the proposed subdivision have been satisfactorily addressed, with particular regard to traffic, parking and access, setbacks and siting, flora and fauna, salinity, contamination, remediation, stormwater management and slope instability.

Subject to separate DAs, the detailed design of dwellings in each proposed lot is unlikely to result in any adverse impacts on the streetscape, the character of the local area or surrounding properties. The future dwelling houses are capable of being designed to respond to the constraints of the site and prevent adverse amenity impacts on neighbouring properties.

The proposal seeks to vary the development standards relating to the minimum lot size in Ryde LEP 2014. The proposal is supported by a satisfactory Clause 4.6 justification to vary development standards and demonstrates the proposal does not result in any adverse impacts despite the variation.

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

7. Suitability of the site for the development

The site is 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 requirements for proposed Lots 1 and 2, it seeks an appropriate intensification of the site that otherwise satisfies relevant planning requirements including vehicular access and parking, landscaped/deep soil areas and private open space areas. The submitted clause 4.6 variation is considered to meet the jurisdictional prerequisites to enable the consent authority to support the proposed departure from the development standard.

A review of Council's map of Environmentally Sensitive Areas indicates the site contains urban bushland and is subject to slope instability (see **Figure 7** below).

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Figure 6: Extract from Ryde Maps indicating areas mapped as Urban Bushland (Endangered) (hatched in red at the rear of the site).

The DA does not seek to remove any existing trees or vegetation. Therefore, the proposal does not unduly impact upon any existing bushland on the site.

The DA is accompanied by a Geotechnical Assessment / Landslip Risk statement prepared by Davies Geotechnical Consulting Engineers and dated 15 April 2021. This Stage 1 Preliminary advice confirms that:

*“The site is suitable for subdivision from a geotechnical perspective as proposed and can be development in accordance with the proposed footprints on each new allotment (refer to **Figure 5** above). The slope conditions are consistent with an M2 landslide risk category under Ryde City Council’s mapping.*

Approval for the future subdivision and residential development should be subject to a geotechnical report being prepared for M2 landslide risk level, and the requirements of the geotechnical report being implemented for the subdivision and future residential developments.”

A condition of consent is recommended to be imposed requiring a geotechnical report addressing the geotechnical issues and landslip risk identified above to accompany any Subdivision Works Certificate and Subdivision Certificate associated with this DA (**Conditions 14 and 42**).

The assessment demonstrates the proposal will not result in any significant adverse impacts upon adjoining properties or the streetscape. The proposed subdivision and future potential residential development are therefore considered to be suitable for the site.

ITEM 1 (continued)**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 variations to the minimum lot size development standards, the submitted Clause 4.6 justification establishes satisfactory environmental planning grounds for the variations, and approval of the variations is consistent with the objectives of the development standards and the R2 Low Density Residential zone.

The proposal has been assessed against the relevant planning instruments and is considered to be acceptable. The proposed subdivision does not significantly or unreasonably affect surrounding sites, is consistent with the existing subdivision pattern of neighbouring properties and the existing streetscape.

The issues raised in the submission are capable of being addressed by the applicant in the future DA/s for dwellings on the site by careful design that responds to the constraints of the site.

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

9. Submissions

In accordance with the Ryde Community Participation Plan, owners of surrounding properties were notified from 4 June to 25 June 2021. In response, 1 submission was received from the owner and occupant of the neighbouring property to the south, 22A Wentworth Road. A summary of each issue and our response is as follows:

- A. Privacy:** While the specific design of the proposed second dwelling is unknown at this stage, there will only be 3m distance between the proposed dwelling and our house. The outlook from our second storey floor to ceiling windows will change from garden to a dwelling. Close proximity means there will be limited privacy for both dwellings.

Comment: The Potential building footprints plan which accompanies this DA (see **Figure 5** above) shows that proposed Lot 2 at the rear of the site is capable of accommodating a new dwelling that is consistent with the applicable development standards and controls. The detailed design of the future dwelling will cater for avoiding direct views between dwellings.

Refer to **Figure 8** below which demonstrates the existing dwelling to the south (No. 22A) relative to the potential 2 storey dwelling at proposed Lot 2, which is required to have a minimum side setback of 1.5m and minimum rear setback of 11m.

ITEM 1 (continued)

The dwelling at No. 22A comprises several windows along its northern façade which have an outlook to the subject site. The outlook from the windows at the northern (rear) part of No. 22A will be maintained as they look over the rear private open space of proposed Lot 2.

No. 22A also has windows along its northern façade in the vicinity of the potential building footprint of proposed Lot 2. As discussed above, the detailed design of the dwelling in proposed Lot 2 will be required to cater for avoiding direct views between dwellings.



Figure 7: Aerial view of the site and surrounds with the Potential Building Footprint Plan overlaid on the subject site. This image shows the existing neighbouring dwelling to the south, No. 22A Wentworth Road, relative to the potential 2 storey dwelling at proposed Lot 2, which is required to have a minimum side setback of 1.5m and minimum rear setback of 11m. The dwelling at No. 22A comprises a bedroom at the northern (rear) corner of the site with an outlook to the subject site. The outlook from this bedroom window will be maintained.

B. Solar Access and Shadowing. We have used Shadow Calculator (utilising Google Maps) to estimate the sun shadows cast by the proposed relocated dwelling and additional dwelling.

Our estimations of the impact of shadowing and solar access on key areas of our property are set out in the following table by month. We have provided several screen shots demonstrating the resulting sun shadows.

Our assessment is that the additional dwelling on the proposed battle-axe lot will significantly overshadow our house and impact on the sunlight we enjoy, particularly during winter.

- We will lose effective use of our washing line between April and August due to extended shading of this area of our property. We note that it would be difficult to relocate the washing line elsewhere on the property, given limited available flat space.

ITEM 1 (continued)

- We will experience a significant loss of access to sunlight and light generally on ground floor of the house nearest the boundary fence. Given the wet areas (bathrooms and laundry) in this area of the house, these locations are likely to turn into a dank cave.
- In winter we will experience a significant loss of afternoon sun which will extend from the windows on the second storey nearest the boundary fence, across the internal courtyard and extending onto both the solar panels and the north facing windows on the right-hand side of the house.

Comment: The Potential building footprints plan which accompanies this DA (see **Figure 5** above) shows that proposed Lot 2 at the rear of the site is capable of accommodating a new dwelling that is consistent with the applicable development standards and controls.

This application is for subdivision of the site into 2 lots only, and does not include demolition, removal of trees or construction of dwellings. The applicant will submit a separate DA/s for these works, which will be required to address the development controls in Ryde DCP 2014, including sunlight access to neighbouring properties.

C. Amenity. The proposed subdivision of and construction of a second dwelling will have a significant impact on the amenity of our property.

We are not against subdivision of the block and increasing housing density in the local area per se. We would ask that this be pursued in a way that doesn't significantly impact the existing amenity of our house.

Comment: The Potential building footprints plan which accompanies this DA (see **Figure 5** above) shows that proposed Lot 2 at the rear of the site is capable of accommodating a new dwelling that is consistent with the applicable development standards and controls. The detailed design of the future dwelling is capable of mitigating potential adverse impacts on the amenity of the neighbouring dwellings.

The issues raised in the objection are not considered sufficient to warrant refusal of the DA.

10. Referrals

Senior Development Engineer: Council's Senior Development Engineer supports the proposal, subject to conditions of consent which include amending the plan of subdivision to provide a shared driveway width of 5.5m for the first 6m of the driveway, as well as at the entrance to the site and across the footpath reserve. See Conditions 1A, 9 and 34. This driveway is to accommodate a reciprocal right of carriageway over each lot, as shown in **Attachment 3**. Prior to the issue of any Subdivision Certificate, the applicant is required to construct the stormwater drainage works and full-length of the driveways to Lots 1 and 2.

ITEM 1 (continued)

The purpose of these works is to ensure that if the lots are sold, they each benefit from basic stormwater management works to service the future dwellings. This avoids the need for the new owners to negotiate these works. The provision of the new driveways ensures that basic construction access is provided to each lot and protects the land from damage during future construction works.

Conditions of consent are recommended to be imposed requiring the applicant to obtain a Subdivision Works Certificate and compliance certificates to this effect (See Conditions 28 and 29).

Landscape Architecture: Council's Landscape Architect agrees with the recommendation in the Arboricultural Impact Assessment that accompanies the DA to retain and protect the existing 9 trees located in the site and adjoining properties as shown in **Figure 2** above. Recommended conditions have been provided, which are also expected to be adhered to in any separate application on the site for demolition and construction of new dwellings. See Conditions 17-22 and 25-27.

11. Conclusion

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

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

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

ITEM 1 (continued)**12. Recommendation**

- A. That the Ryde Local Planning Panel, as the consent authority, grant consent to LDA2021/0183 for Torrens title subdivision of the land into 2 lots to include a battle-axe lot at 20 Wentworth Road, Eastwood subject to the recommended conditions in **Attachment 1**.
- B. That the objector be advised of the decision.

ATTACHMENTS

- 1** Draft Conditions of Consent
- 2** Clause 4.6 Justification
- 3** Subdivision Plan & Stormwater Plan - subject to copyright provisions

Report Prepared By:

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Report Approved By:

Madeline Thomas
Senior Coordinator - Development Assessment

Sandra Bailey
Manager - Development Assessment

Liz Coad
Director - City Planning and Environment

ITEM 1 (continued)

ATTACHMENT 1

**Attachment 1
Ryde Local Planning Panel report: LDA2021/0183**

DRAFT CONDITIONS OF CONSENT

Development Description: Torrens title subdivision of land into 2 lots
to include a battle-axe lot.

Property Addresses: 20 Wentworth Road, Eastwood

GENERAL

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

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

Document Description	Date	Plan No/Reference
Plan of Proposed Subdivision (as amended in red)	19.01.2020	8935
Site and Roof Drainage Plan (as amended in red)	23.07.2021	D01, Revision B

The Plan of Proposed Subdivision is to be amended to reflect the conditions in this consent and the following requirement:

a) Passing Bay, Access Handle: The driveway at the entrance and across the footpath reserve shall be limited to 5.5m wide combined driveway to access both proposed Lots. The 5.5m wide driveway shall be extended 6.0m into the property with an internal transition to the 3.0m wide access handle as marked in red on the subdivision plan. A reciprocal Right of Carriageway over this part of the internal driveway shall be created in favour of each proposed Lot.

2. **Scope of this Consent.** This consent is for the approval of the Torrens title subdivision of the site and construction of the associated stormwater drainage works and driveways to Lots 1 and 2.

Separate development consent is required to be obtained for the:

- i. Demolition of the existing dwelling and structures on the site.
- ii. Removal of any trees on the site.
- iii. Construction of new dwellings on each proposed lot.

3. **Design and Construction Standards.** All engineering plans and work inside the property shall be carried out in accordance with the requirements of the relevant

ITEM 1 (continued)

ATTACHMENT 1

Australian Standard, subject to separate development consent being obtained for building works. All Public Domain works or modification to Council infrastructure which may be located inside the property boundary, must be undertaken in accordance with the Ryde Development Control Plan (DCP) 2014 Part 8.5 (*Public Domain Works*), except otherwise as amended by conditions of this consent.

4. **Stormwater Management.** To ensure the management of stormwater runoff from the future development is undertaken without impact to the subject site, neighbouring properties or receiving drainage system, stormwater runoff from the development shall be collected and piped by gravity flow to the kerb in Wentworth Road, in accordance with the requirements of Ryde Development Control Plan (DCP) 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures, and generally in accordance with the approved Stormwater Management Plan by Zait Engineering Solutions Pty Ltd, Job No 20-2668, Issue B, dated 23/7/21. Accordingly, detailed engineering plans and certification demonstrating compliance with this condition are to be submitted with any separate application for development consent for building works and any application for a Subdivision Works Certificate.

Any future development within each proposed Lot will require onsite detention to be provided as per the Ryde DCP 2014 Part 8.2 Stormwater and Floodplain Management. Consideration should be given to the levels of the inter-allotment drainage system, if an underground OSD system is proposed.

5. **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 (e.g., Telstra, Jemena, Ausgrid, etc.), with all costs associated with this alteration to be borne by the applicant.
6. **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.
7. **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.

PRIOR TO SUBDIVISION WORKS CERTIFICATE

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

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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.

8. **Battle-axe Handle.** Detailed plans must be submitted depicting a compact engineered surface suitable for vehicular movements for the length of the battle-axe handle and to comply with the Ryde DCP 2014 Part 8.3 Driveways. These plans must be to the satisfaction of the appointed Principal Certifying authority.
9. **Passing Bay, Access Handle.** The driveway at the entrance and across the footpath reserve shall be limited to 5.5m wide combined driveway to access both proposed Lots. The 5.5m wide driveway shall be extended 6.0m into the property with an internal transition to the 3.0m wide access handle as marked in red on the subdivision plan. A reciprocal Right of Carriageway over this part of the internal driveway shall be created in favour of each proposed Lot.
10. **Stormwater Management.** To ensure the management of stormwater runoff from the future development is undertaken without impact to the subject site, neighbouring properties or receiving drainage system, stormwater runoff from the development shall be collected and piped by gravity flow to the kerb in Wentworth Road, in accordance with the requirements of the Ryde DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures, and generally in accordance with the approved Stormwater Management Plan by Zait Engineering Solutions Pty Ltd Job No 20-2668 Issue B dated 23/7/21. Accordingly, detailed engineering plans and certification demonstrating compliance with this condition are to be submitted with the application for a Subdivision Works Certificate.

Any future development within each proposed Lot will require onsite detention to be provided as per the Ryde DCP 2014 Part 8.2 for Stormwater & Floodplain Management. Consideration should be given to the levels of the of the inter-allotment drainage system, if underground OSD system is proposed.

11. **Vehicle Access and 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 (Offstreet Parking standards).
12. **Road and Public Domain Works.** To ensure the serviceability of infrastructure adjacent the development property is consistent with the life of the development and provides safe and efficient access to the site, the following Public Domain works are required:

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- a. Construction of a new concrete vehicular crossing of width 5.5 m wide fronting the approved vehicle entry.
- b. Reinstatement of damaged sections of footpath, kerb and gutter for the site frontage.
- c. Adjustments to the existing structures/services within the footpath area.
- d. Construction of any associated structures within the footpath reserve to achieve the required driveway width.

In accordance with Section 138 of the Roads Act, detailed engineering plans prepared by a qualified and experienced civil engineer, complying with the specifications outlined in the Ryde DCP 2014 Part 8.5 (Public Civil Works) must be submitted and approved by Council prior to the issue of any Subdivision Works Certificate.

Engineering plans assessment and inspections fee associated with this work are payable in accordance with Council's Management Plan prior to approval being issued by Council.

13. **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 The Ryde 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 Subdivision Works 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 5.5 m. wide, 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.

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

ITEM 1 (continued)

ATTACHMENT 1

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

14. **Geotechnical Assessment.** The recommendations of the 'Geotechnical Assessment / Landslip Risk' statement, prepared by Davies Geotechnical Consulting Engineers and dated 15 April 2021, shall be implemented. This includes the submission of a geotechnical report prepared for M2 landslide risk level. The recommendations of the geotechnical report shall be incorporated into the plans submitted for the application of the Subdivision Works Certificate.

15. **Fibre-ready Facilities and Telecommunications Infrastructure.** Prior to the issue of any Subdivision Works Certificate satisfactory evidence is to be provided to the Certifying Authority that arrangements have been made for:

- (i) The installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Alternatively, demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.

And

- (ii) The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

(Note: Real estate development project has the meanings given in Section 372Q of the Telecommunications Act).

PRIOR TO COMMENCEMENT OF SUBDIVISION WORKS

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.

16. **Removal of Existing Buildings.** The existing dwellings and structures on each proposed Lot shall be demolished and debris removed from site. No trees are permitted to be removed.
17. **Tree Retention.** As identified in the Arborist Assessment prepared by Advanced Treescaping Consulting dated 21/05/2021. The following trees on site or adjoining the site are to be retained and protected:

Tree No.	Species "Common name"	Notes
1	<i>Eucalyptus nicholii</i> (Narrow Leafed Peppermint Gum)	In adjoining property.
2	<i>Camellia sasanqua</i>	TPZ fencing required.

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	(Sasanqua Camellia)	
3	<i>Rhododendron sp.</i> (Rhododendron)	In adjoining property.
4	<i>Brachychiton acerifolius</i> (Illawarra Flame Tree)	TPZ fencing required.
5	<i>Syncarpia glomulifera</i> (Turpentine)	In adjoining property.
6	<i>Chamaecyparis obtusa</i> (Hinoki Cypress)	TPZ fencing required.
7	<i>Chamaecyparis obtusa</i> (Hinoki Cypress)	TPZ fencing required.
8	<i>Chamaecyparis obtusa</i> (Hinoki Cypress)	TPZ fencing required.
9	<i>Chamaecyparis obtusa</i> (Hinoki Cypress)	TPZ fencing required.

18. **Tree Protection** is to be installed before demolition and construction commences as indicated in the Arborist Report "Appendix 1: Site Plan with Trees and Proposed Development" prepared by Advanced Treescaping Consulting dated 21/05/2021.
19. **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.
20. **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.
21. **Provision of Project 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.
22. **Arborist Report.** All items in the Arborist Report outlined in: "Section 6.0 Tree Protection Plan and Section 7: Tree Management Plan" prepared by Advanced Treescaping Consulting dated 21/05/2021, are to be implemented.

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

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requirements under previous Parts of the consent must be implemented and maintained at all times during the construction period.

23. **Stormwater Management - Construction.** The stormwater drainage system on the site must be constructed in accordance with the Subdivision Works Certificate version of the Stormwater Management Plan by Zait Engineering Solutions Pty Ltd Job No 20-2668 Issue B dated 23/7/21, submitted in compliance to the condition labelled "Stormwater Management." and the requirements of Council in relation to the connection to the public drainage system.
24. **Battle-axe Handle - Construction.** The battle-axe handle driveway on the site must be constructed in accordance with the Subdivision Works Certificate version of the plans for the access handle as submitted in compliance to the condition labelled "Battle-axe Handle."
25. **Excavation for Services within Tree Protection Zone (TPZ).** Any excavation for services or grading/re-grading within the identified TPZs of trees to be retained shall be carried out by hand using manual hand tools. Roots greater than 25mm are not to be damaged or severed without the prior written approval of the Project Arborist.
26. **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 rehabilitation for all trees to be retained.	Project Arborist to mark Tree Protection Zones and install fences, mulch, irrigation and 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.

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Defects liability / maintenance period	Tree vigour and structure	Undertake any required remedial tree works. Certification of tree protection if necessary.
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27. **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).

PRIOR TO ISSUE OF A COMPLIANCE CERTIFICATE SUBDIVISION WORKS

A Compliance Certificate must be obtained from a Principal Certifying Authority

Prior to issue, the Principal Certifying Authority must ensure that all works are completed in compliance with the approved subdivision works 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.

Engineering Conditions Prior to Issue of Compliance Certificate

28. **Work-as-Executed Plan.** A Work-as-Executed plan (WAE) of the as constructed Stormwater Management System and the access handle must be submitted with the application for the release of the Subdivision Certificate. The WAE must be prepared and certified (signed and dated) by a Registered Surveyor and is to clearly show the constructed stormwater drainage system and finished surface levels.
29. **Engineering Compliance Certificates.** To ensure that all engineering facets of the development have been designed and constructed to the appropriate standards, Compliance Certificates must be obtained for the following items and are to be submitted to the Accredited Certifier prior to the release of any Subdivision 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.
- Confirming that the constructed drainage system for each Lot complies with the construction plan requirements and the Ryde DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures.
 - Confirming that constructed concrete access handle complies with the construction plan requirements and Ryde DCP 2014 Part 8.3.
 - 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

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- Office of Environment and Heritage and the Ryde DCP 2014 Part 8.1 (Construction Activities).
- d) Compliance certificate from Council confirming that all external works in the public road reserve have been completed to Council's satisfaction.

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.

30. **Compliance Certificate Subdivision Works.** The compliance certificate associated with the development and any related S4.55 applications, must be issued for the entire development prior to the release of the Subdivision Certificate by the private certifier. Copies of the compliance certificate and the associated documents are to be submitted to Council prior to the issue of the Subdivision Certificate.
31. **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
Roads & Traffic Management Facilities	\$ 3,204.48
Plan Administration	\$ 295.57
The total contribution is	\$ 20,000.00

These are contributions under the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979 as specified in City of Ryde 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.

The contribution must be paid **prior to the issue of any Subdivision Certificate**. Payment may be by EFTPOS (debit card only), CASH or a BANK CHEQUE made payable to the **City of Ryde**. Personal or company cheques will not be accepted.

A copy of the Section 7.11 Development Contributions Plan may be inspected at the Ryde Customer Service 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>.

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32. **Final Plan of Subdivision.** The submission of a final plan of subdivision suitable for endorsement by the Authorised Officer.
33. **Final Plan of Subdivision - Title Details.** The final plan of subdivision shall contain details of all existing and/or proposed easements, positive covenants and restrictions of the use of land.
34. **Easements for Services and Stormwater.** Easements shall be created where required over all services, stormwater pipelines roof encroachments and gutters which encroach/service the adjoining lot.
35. **Right of Carriageway.** A reciprocal Right of Carriageway shall be created over the driveway at the entrance to achieve the subdivision arrangement as depicted on the approved subdivision plan (as amended in red).
36. **88B Instrument.** The submission of an instrument under Section 88B of the Conveyancing Act 1919, creating any Easements Positive Covenants and restrictions on use, the Ryde City being the authority empowered to release vary or modify the same.
37. **Existing Easements and Restrictions.** The applicant must acknowledge all existing easements and restrictions of the use of land on the final plan of subdivision.
38. **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.
39. **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 NSW Land Registry Services.
40. **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.

ITEM 1 (continued)

ATTACHMENT 1

41. **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).
42. **Fibre-Ready Facilities and Telecommunications Infrastructure.** Prior to the issue of any Subdivision Certificate satisfactory evidence is to be provided to the Certifying Authority that arrangements have been made for:
- (i) The installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Alternatively, demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.
- And
- (ii) The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.
- (Note: Real estate development project has the meanings given in Section 372Q of the Telecommunications Act).
43. **Geotechnical Assessment.** A suitably qualified geotechnical engineer shall certify that the recommendations of the geotechnical report submitted with the Subdivision Works Certificate documentation have been implemented in the works associated with the subdivision, driveway and stormwater drainage works.
44. **Official Property Addressing.** The property addressing displayed on the administration sheets of a subdivision or strata plan, must be in accordance with the official property addressing allocated by Council's Land Information Section.

End of consent.

ITEM 1 (continued)

ATTACHMENT 2

**Attachment 2 - Applicant's clause 4.6
written request**

Clause 4.6 Justification

No 20 Wentworth Road Eastwood

Introduction - Content of the clause 4.6 request

The applicant seeks an exception from the minimum lot size development standard for both lots in the proposed subdivision pursuant to clause 4.6 of the Ryde LEP 2014.

Clause 4.1 of the Ryde LEP 2014 requires a minimum lot size of 580sqm and Clause 4.1C requires a minimum lot size for a battle-axe lot of 740sqm excluding the area of the access handle.

The applicant seeks to create two lots with the following lot sizes:

Proposed Lot 1 - Street fronting allotment

Area - Total area 540m²

Proposed Lot 2 – Battle-axe Lot

Area - Including the access handle - 747.8m²
Excluding access handle – 641.8m²

Extent of Departure from the Development Standard

Proposed Lot 1 - Street fronting allotment – 40sqm or 6.89%

Proposed Lot 2 – Battle-axe Lot – 98.2sqm or 13.27%

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

It is significant to note that allotments within the precinct vary significantly in lot area and configuration and includes several similarly proportioned lots to that proposed with this application.

ITEM 1 (continued)

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The proposal generates two quality parcels of regular shaped land suitable for the construction of two contemporary detached dwellings. Compliant lot width, depth of lot and access handle width is achieved.

A degree of flexibility to the application of the minimum lot size development standard is warranted in this instance as all numerical controls can be met with regards to the construction of a dwelling on each proposed lot. No adverse planning consequences are likely arise given that good design can generate two compliant dwellings on-site.

No adverse overshadowing is likely in a future development context and privacy considerations can be readily resolved through design. The proposed subdivision despite the lot area variation, can facilitate the provision of quality built form replacing a redundant dwelling on-site.

The proposed subdivision creates a pattern and lot size which is consistent with the lot pattern in the immediate locality. The minor variation from the lot size standard will not be discernible to the casual observer from a streetscape perspective given a typical two storey dwelling can be generated on the proposed street facing lot.

For reasons expressed in this submission the 'flexibility' provided by clause 4.6 of the LEP facilitates a design outcome that does not impact on any adjoining property despite the proposed variation from the site area standard.

Application of Clause 4.6

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

Comment:

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

ITEM 1 (continued)

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Clauses 4.1 and 4.1C of the Ryde LEP 2014 are not expressly excluded from the operation of clause 4.6 and thus Council would have the authority to grant consent to a breach of the specified development standard under clause 4.1 and 4.1C subject to being satisfied of other matters under clause 4.6.

Contravention of a Development Standard

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

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

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.63(a) - Unreasonable and Unnecessary

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

This, with clause 4.6(4)(a)(i) requires Council to consider the written request and to form an opinion that it satisfactorily demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances, rather than Council undertaking its own enquiry and forming a direct opinion of satisfaction on whether compliance with the development standard is unreasonable or unnecessary in the circumstances.

- (4) Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*

ITEM 1 (continued)

ATTACHMENT 2

- (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*

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

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

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

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

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

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

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

ITEM 1 (continued)

ATTACHMENT 2

1 Objectives of development standard

Clause 4.1 relates to the **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,

(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.

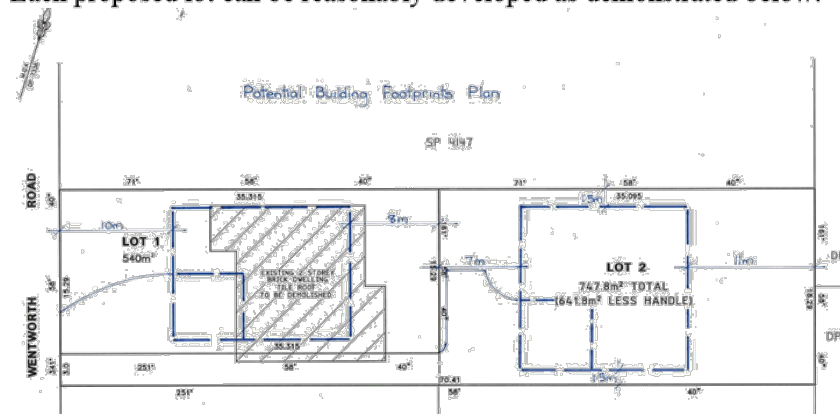
Clause 4.1C relates to **Minimum lot size for battle-axe lots**

(1) The objectives of this clause are as follows:

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

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

Each proposed lot can be reasonably developed as demonstrated below:



Future dwellings on the proposed lots are capable of meeting standards and controls as expressed in the Ryde DCP 2014.

The proposed battle-axe handle is in keeping with the immediate subdivision pattern and the size of the proposed allotments are in keeping with the character and lot pattern of other allotments in the greater neighbourhood (particularly with the northern and adjoining southern properties).

ITEM 1 (continued)

ATTACHMENT 2

Vehicle access associated with the rear lot can be reasonably provided to ensure cars can enter and leave in a forward direction. Ample space on both lots will be available within the setbacks to generate appropriate landscaping to complement the future built form.

No significant trees require removal to facilitate the proposed subdivision.

Having regard to the above the proposal is consistent with the objectives of the subdivision standard.

The subject site is zoned low density residential and the proposed subdivision will sit comfortably within the existing street block.

There will be no disruption of views, loss of privacy or significant loss of solar access given the site context and orientation.

There will be no erosion of bushland or scenic quality as a result of the subsequent dwelling construction on each proposed lot.

Compliance unnecessary

The development proffers alternative means of achieving the objectives of the lot size standard by providing an acceptable residential character without comprising the amenity of the surrounding area in terms of visual impacts and solar access.

As the development proffers alternative means of achieving the objectives of clause 4.1 and 4.1C as identified above, strict compliance is unnecessary.

Compliance unreasonable

There would be no purpose served if strict compliance was required by the consent authority given that the proposed subdivision is consistent with the existing subdivision pattern within the street block.

- The existing allotment is a significant large allotment with a reasonable width and is readily capable of being adequately subdivided to provide two reasonable sized building allotments. The existing site is close to public transport, Eastwood shops and railway station and the subdivision is consistent with the principles of urban consolidation.

ITEM 1 (continued)

ATTACHMENT 2

- The immediate precinct has a varied range of allotment sizes and the adjoining southern site has a similar subdivision. The proposed subdivision would not detract from the residential character of the locality and will lead to the provision of quality additional housing.
- Considerations relating to overshadowing or privacy can be reasonably resolved through good design on both proposed lots. Compliance with setbacks can also be achieved.
- Both lots will benefit from exceptional exposure to direct sunlight.
- All utility services are available to the site and no trees are required to be removed to facilitate the proposed subdivision.
- A suitable level building platform and areas of private open space can be provided for both lots utilising all aspects of the available land.

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

No particular benefit would be derived from the strict application of the site area standard in this instance, particularly in terms of streetscape considerations; strict compliance is therefore unreasonable. Refusal of the application would unnecessarily sterilise the use of a valuable parcel of land in the urban context.

It is reasonably concluded that *"there are sufficient environmental planning grounds to justify contravening the development standard"* in this instance.

Clause 4.6(3)(b) - Sufficient Environmental planning grounds

Clause 4.6(3)(b) requires the applicant's written request to demonstrate that that there are sufficient environmental planning grounds to justify contravening the development standard.

This, with clause 4.6(4)(a)(i) requires Council to consider the written request and to form an opinion that it satisfactorily demonstrates that that there are sufficient environmental planning grounds to justify contravening the development standard, rather than Council undertaking its own enquiry and forming a direct opinion of satisfaction on whether there are sufficient environmental planning grounds to justify contravening the development standard.

ITEM 1 (continued)

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The term “environmental planning grounds” is broad and encompasses wide environmental planning grounds beyond the mere absence of environmental harm or impacts : Tuor C in *Glenayr Avenue Pty Ltd v Waverley Council* [2013] NSWLEC 125 at [50].

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C held at [60] that environmental planning grounds as identified in cl 4.6 must be particular to the circumstances of the proposed development on a site. This finding was not disturbed on appeal (Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 & Meagher JA; Leeming JA in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248.

In this particular case the variation from the lot size standards does not impact on the ability to accord with all other development standards and controls.

Strict compliance with setbacks, building height and landscaping can be met in this instance.

The proposed subdivision will not be intrusive and will sit well within its setting surrounding the site.

Despite the lot size variation, a compliant building height and a consistent front setback can be achieved facilitating the orderly and economic development of the land.

In addition, there are no adverse amenity impacts arising, which would adversely affect existing residential amenity. The social and economic welfare of the local community will be maintained.

The proposal delivers affordable housing and avoids the sterilisation of a valuable parcel of land.

The proposal does not give rise to impacts on local heritage, flora and fauna.

Contemporary built form can be generated which contributes to the streetscape and built environment consistent with the zone objectives.

The approval of the proposed subdivision will invite continued public participation in the next development stage of the site. An appropriate built form can be generated consistent with the public interest.

ITEM 1 (continued)

ATTACHMENT 2

Having regard to the above there are well founded environmental planning grounds to vary the development standard in this instance.

Clause 4.6(5) Public Interest

Clause 4.6(5) of the LEP provides that Council, as consent authority, must not grant development consent for a development that contravenes a development standard unless it is satisfied that 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.

(5) In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.*

Unlike clause 4.6(4)(a)(i), this requires Council, as consent authority to form a direct opinion of satisfaction that the proposed development will be in the public interest (rather than considering whether the applicant's written request demonstrates that the proposed development will be in the public interest).

A consideration of the public interest aspects of the development is provided in the following, to assist Council form the requisite opinion of satisfaction.

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

The objectives of the R2 Low density zone are:

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

ITEM 1 (continued)

ATTACHMENT 2

The proposed development is consistent with the objectives as follows:

The proposed development provides an appropriate low-density infill subdivision generating contemporary housing which provides for the housing need of the community.

Approval of the subdivision permits residentially zoned land to be used for residential purposes of an appropriate low density and scale.

The proposal is not inconsistent with, or incapable of, existing in harmony with other developments in the immediate locality.

The building height, scale and massing of future development will be compatible with the evolving and desired built character of the area as governed by Council's development control plan.

The lot size variation is of no consequence in respect of the zone objective. Approval of the proposed development will have no impact on any other nearby development opportunities.

The lot size variation will not result in any significant view loss, loss of privacy or overshadowing in the context of the site. There are no adverse heritage impacts associated with the proposed development. The height and scale of future development will be typical and consistent with the residential context.

It is noted that Council has not strictly required full compliance with the development standard in the past. Two examples of recent approved variations from the minimum lot size development standard include:

- No 4 Lovell Road Eastwood where the variation was up to 17.7%; and
- No 38 Wicks Road North Ryde where the variation was up to 22%.

Having regard to the above the proposal is consistent with the objectives of the zone and the proposal can be approved and be in the public interest.

Concurrence of the Planning Secretary

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

ITEM 1 (continued)

ATTACHMENT 2

*(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 Planning Secretary before granting concurrence.*

It is expected that the Council will obtain the concurrence of the Planning Secretary as required (possibly through delegation).

The variation to the minimum lot size standard does not raise any matter of significance for State or regional environmental planning.

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

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

Conclusion

No adverse matters arise in respect of the above considerations.

The proposed variation from the development standard is reasonable and appropriate in this instance. The proposed subdivision provides low density housing opportunity on an otherwise under utilised lot.

Strict compliance with the development standard is therefore unnecessary and unreasonable given the circumstances of the site.

There are sufficient environmental grounds to justify the breach in this instance. The proposed lot sizes are in the public interest. It is recommended that Council invoke its powers pursuant to clause 4.6 and approve the application.

It is noted that Acting Commissioner P Clay (SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112) in a recent consideration in relation to the consideration of clause 4.6, deemed that there is no numerical limitation to the extent of the variation sought. Such will be determined on merit. In consideration of the merits of the application, the proposal is reasonable.

ITEM 1 (continued)

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Should you require any further information please contact the undersigned.

Yours Faithfully



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