

**Item 1**
**72 Vimiera Road, Eastwood - LDA2024/0057**
**Strata title subdivision of existing dual occupancy (attached).**
**Report prepared by:** Assessment Officer - Town Planner

**Report approved by:** Senior Coordinator - Development Assessment; Manager -  
 Development Assessment

**City of Ryde  
 Local Planning Panel Report**

<b>DA Number</b>	LDA2024/0057
<b>Site Address &amp; Ward</b>	72 Vimiera Road, Eastwood West Ward
<b>Zoning</b>	R2 Low Density Residential under RLEP 2014
<b>Proposal (as amended)</b>	Strata title subdivision of existing dual occupancy (attached).
<b>Property Owner</b>	Jiachi Tian
<b>Applicant</b>	Tania Hannaford
<b>Report Author</b>	Deren Pearson - Town Planner
<b>Lodgement Date</b>	27 March 2024
<b>Notification - No. of Submissions</b>	None – not required to be notified
<b>Cost of Works</b>	\$10,000.00
<b>Reason for Referral to LPP</b>	Departure from development standards – contravention of the dual occupancy (attached) subdivisions development standard by more than 10% - Schedule 1, Part 3 of Local Planning Panels Directions
<b>Recommendation</b>	Approval

<b>Attachments</b>	<ol style="list-style-type: none"> <li>1. Draft conditions of consent</li> <li>2. Proposed plans</li> <li>3. Clause 4.6 written variation request to development standard for dual occupancy (attached) subdivisions</li> </ol>
--------------------	---

## 1. Executive Summary

The subject application at 72 Vimiera Road, Eastwood (Lot 2 DP 225956) seeks consent for strata title subdivision of existing dual occupancy (attached). The existing development was granted consent by Council on 26 September 2016 under Local Development Application No. LDA2016/0185. An occupation certificate for the building was issued by a private certifier on 21 February 2024.

The application is reported to the Ryde Local Planning Panel for determination as it proposes a departure from the development standard for dual occupancy (attached) subdivisions. The development contravenes Clause 4.1A(b)(iii), which prescribes that each resulting lot is to have an area of not less than 290m<sup>2</sup>. The area of proposed Lot 1 is 324m<sup>2</sup> and proposed Lot 2 is 249m<sup>2</sup> in area. Lot 2 results in a shortfall of 41m<sup>2</sup>, which is a variation of 14.14% from the development standard.

The applicant has submitted a Clause 4.6 written variation request with respect to the contravention of the development standard for dual occupancy (attached) subdivisions. The submission satisfies the pre-conditions for a consent authority to allow a variation to the standard.

The proposal has been assessed in accordance with the relevant environmental planning instruments and local provisions in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is not contrary to the public interest and it is considered to be a suitable form of development for the site.

## 2. The Site and Locality

The site is legally described as Lot 2 within DP 225956 and it is known as 72 Vimiera Road, Eastwood. The site is a corner allotment located at the intersection of Vimiera Road and Deborah Place. The site is irregular in shape with a site area of 581.50m<sup>2</sup>. The site has a road frontage of 18.795 metres to Vimiera Road, a secondary frontage of 23.61 metres to Deborah Place and a splayed frontage of 8.205 metres to the intersection of the two roads.

The site is located along the south-eastern side of Vimiera Road and the south side of Deborah Place with one dwelling oriented towards each road frontage. The site presently accommodates a two storey attached dual occupancy which was granted development consent by Council on 26 September 2016 under Local Development Application No. LDA2016/0185. Vehicular access to Unit 1 is obtained from Vimiera Road and Unit 2 is accessed from Deborah Place.

The site is zoned R2 Low Density Residential and it is surrounded by a range of dwelling types, including detached dwelling houses, dual occupancy (attached)

developments and multi dwelling housing developments. The site is not identified as being affected by any environmental hazards. The site does not contain any heritage items, nor is it located in the vicinity of any.



**Figure 1 - Aerial photograph of site**



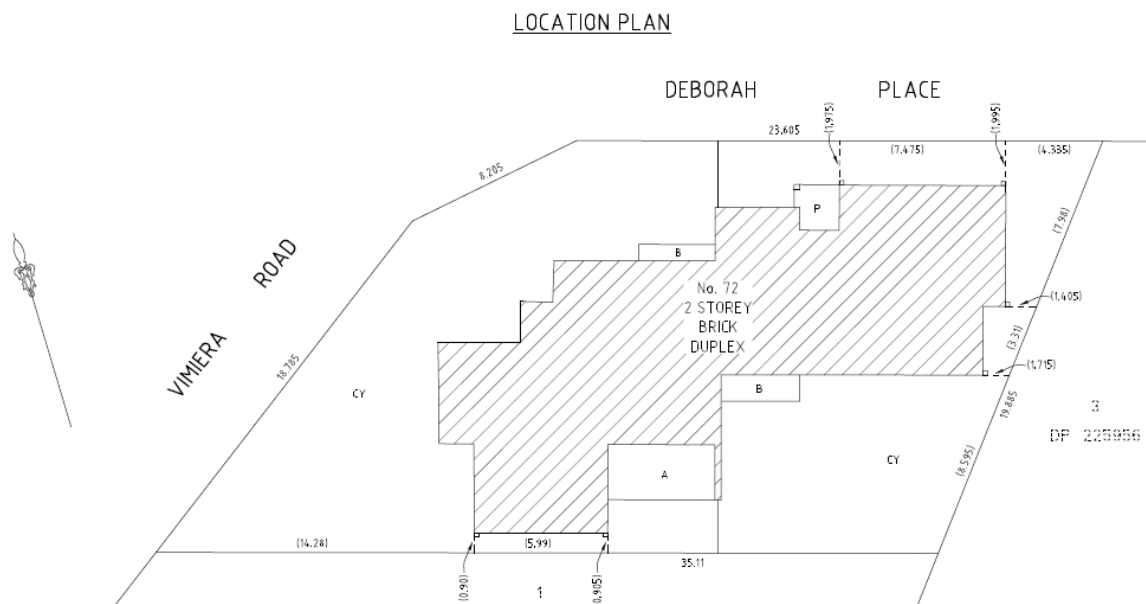
**Figure 2 - The site as viewed from the intersection of Vimiera Road and Deborah Place**

### 3. The Proposal

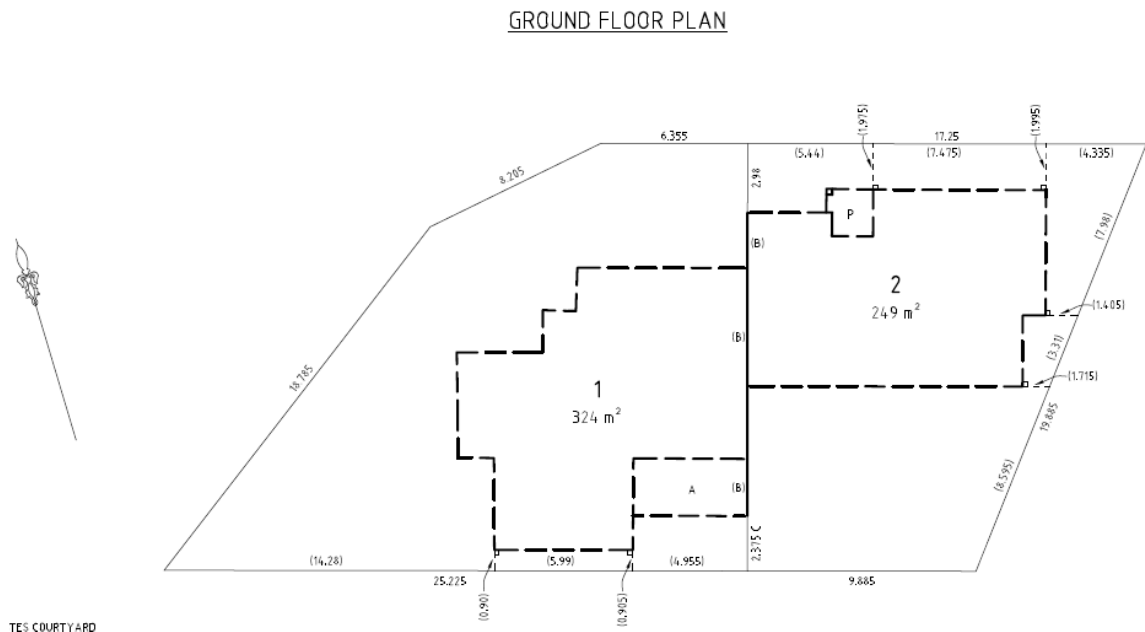
Consent is sought for strata title subdivision of an existing dual occupancy (attached) approved under Local Development Application No. LDA2016/0185.

The proposed strata title subdivision comprises (**Figures 3 and 4**):

- Lot 1 – 324m<sup>2</sup> in area with 18.785m road frontage to Vimiera Road. The allotment has a 17.25m secondary frontage to Deborah Plans and a splayed 8.205m frontage to the intersection of the two roads.
- Lot 2 – 249m<sup>2</sup> in area with 17.25m road frontage to Deborah Place.



**Figure 3: Plan of Subdivision – Location Plan**



**Figure 4: Plan of Subdivision - Ground Floor Plan**

## 4. Background

### History of the site

#### LDA2016/0185

Development consent was granted by Council on 26 September 2016 to Local Development Application No. LDA2016/0185 for demolition and a new dual occupancy (attached) development.

#### MOD2016/0246

Section 96(1A) application was approved by Council on 26 September 2016 to modify LDA2016/0185 by amending the floor levels of the building. The floor levels were amended to achieve compliance with condition No. 47 relating to flooding and overland flow protection.

#### PCA2022/0063 (Certifier Reference PC21186)

Construction Certificate for the building was issued by Ace Building Approvals on 28 March 2022.

#### OCC2024/0118 (Certifier Reference OC21186)

Occupation certificate for the building was issued by Ace Building Approvals on 21 February 2024.

LDA2024/0057

The subject application seeking consent for strata subdivision of the existing dual occupancy (attached) development was lodged on 27 March 2024.

### **Application History**

Further information was requested from the Applicant on 17 June 2024 seeking clarification of the lot size for each proposed strata allotment. The reason for the request is that the proposed lot sizes of 324m<sup>2</sup> for Lot 1 and 249m<sup>2</sup> for Lot 2 (total of 573m<sup>2</sup>) result in a shortfall of 8.5m<sup>2</sup> from the total site area of 581.5m<sup>2</sup> noted on the survey plan lodged with LDA2016/0185 for the dual occupancy (attached) development.

The applicant advised that the proposed lot sizes are correct, as confirmed by their surveyor. The surveyor advised that Deposited Plan 225956 shows the area of the subject allotment (Lot 2) as 23 perches, which equals 581.70m<sup>2</sup>. Further, the survey advised that areas in the older plans were rounded (usually down, but not always) to ¼ perch which equals 6.4m<sup>2</sup>.

A plan of subdivision was prepared in 2023 which calculated the area of the allotment by survey as 576.40m<sup>2</sup>. The surveyor confirmed that the difference in the proposed lot sizes is due to the following factors:

- There was a rounding error on the original DP;
- The areas detailed on the plan of subdivision are excluding the partition wall, which is common property; and
- The areas on the strata plan are shown rounded down to the nearest the nearest whole square metre.

## **5. Planning Assessment**

### **Environmental Planning and Assessment Act**

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

#### **5.1 State Environmental Planning Instruments**

The assessment of Local Development Application LDA2016/0185 for the dual occupancy (attached) considered the provisions of the following instrument:

- SEPP BASIX 2004

The proposed strata title subdivision does not alter the performance of the approved development against this instrument.

## 5.2 Ryde Local Environmental Plan 2014

The property is zoned R2 Low Density Residential, and the proposed development is permissible with Council's consent.

### Aims and objectives for residential zones:

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

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

### Part 4 – Principal development standards

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

Ryde LEP 2014	Proposal	Compliance
<b>4.1A Dual occupancies (attached) subdivisions</b>		
Despite clause 4.1, development consent may be granted for the Torrens title subdivision of a lot or subdivision of a lot under the Strata Schemes Development Act 2015 if—		
(a) before the day <i>Ryde Local Environmental Plan 2014</i> (Amendment No 28) commences, a development application for a dual occupancy (attached) has been approved and an occupation certificate has been issued for that development, and— <ul style="list-style-type: none"> <li>(i) the lot to be subdivided has an area of at least 580 square metres, and</li> <li>(ii) 1 dwelling will be situated on each lot resulting from the subdivision, and</li> <li>(iii) each resulting lot will have an area of not less than 290 square metres, or</li> </ul>	LDA2016/0185 was granted consent prior to the commencement of Amendment No. 28 (5 March 2021), however the occupation certificate was issued after this date, therefore Clause 4.1A(b) applies to the development.	N/A

Ryde LEP 2014	Proposal	Compliance
(b) On or after the day <i>Ryde Local Environmental Plan 2014</i> (Amendment No28) commences, a development application for a dual occupancy (attached) has been approved for the lot, and—  (i) the lot has an area of at least 580 square metres, and (ii) 1 dwelling will be situated on each lot resulting from the subdivision, and (iii) each resulting lot will have an area of not less than 290 square metres, and (iv) the primary road frontage of each resulting lot will be equal to or greater than 7.5 metres.	581.50m <sup>2</sup>  1 dwelling on each lot  Lot 1 – 324m <sup>2</sup> Lot 2 – 249m <sup>2</sup>  Lot 1 – 18.78m Lot 2 – 17.25m	Yes  Yes  Yes <b>No – See Clause 4.6</b> Yes Yes
<b>Clause 4.6 Exceptions to development standards</b>		
(1) The objectives of this clause are as follows—  (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	This application is accompanied by a request to vary the development standard in clause 4.1A Dual occupancy (attached) subdivisions (b)(iii).	<b>See discussion below</b>

### Clause 4.6 - Exceptions to Development Standards

As shown in the above table, the proposal does not comply with Clause 4.1A(a)(iii) *Dual occupancy (attached) subdivisions*.

The DA is accompanied by a written request to vary the development standard under Clause 4.6 of the RLEP 2014.

Clause 4.1A(a)(iii) requires each resulting lot to have an area of not less than 290m<sup>2</sup>. The proposal seeks to create two strata lots with an area of 324m<sup>2</sup> for Lot 1 and 249m<sup>2</sup> for Lot 2 (the lot fronting Deborah Place). The Lot 2 area results in a shortfall of 41m<sup>2</sup> or 14.14%.

The following assessment of the variation to Clause 4.1A *Dual occupancy (attached) subdivisions* development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC*



*118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.*

Clause 4.6 - Objectives

- 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.
- 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 4.1A *Dual occupancy (attached) subdivisions* is not expressly excluded from the operation of this clause. (It is noted that the proposal is for strata subdivision; not Torrens title subdivision which is excluded under Clause 4.6(8)(cb).)

- 3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that-
  - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
  - (b) there are sufficient environmental planning grounds to justify contravention of the development standard.

Comment: The matters within cl 4.6(3) are addressed as follows:

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

With respect to clause 4.6(3)(a), the common ways to establish whether compliance with the development standard is unreasonable or unnecessary is known as the '5-part test' or the '*Wehbe* test' (from the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827). The test can be summarised as follows:

Compliance with the development standard is unreasonable or unnecessary if the:

1. objectives of the development standard are achieved notwithstanding the non-compliance
2. underlying objective or purpose is not relevant to the development
3. underlying objective or purpose would be defeated or thwarted if compliance was required
4. development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard

5. zoning of the land on which the development is proposed was unreasonable or inappropriate.

There are no objectives identified within Clause 4.1A, therefore the applicant's written request seeks to demonstrate that compliance with the development standard is unreasonable or unnecessary as follows:

2. underlying objective or purpose is not relevant to the development

It is understood that the underlying purpose of limiting subdivision is to prevent the fragmentation of land. The site contains an approved dual occupancy, and the applicant seeks STRATA subdivision relating to that dual occupancy. The subdivision will not cause the fragmentation of land. The STRATA subdivision is considered to promote the orderly and economic use and development of land whereby the subdivision will allow each of the units of the dual occupancy to be sold individually while maintaining a shared responsibility for the maintenance of the development.

3. underlying objective or purpose would be defeated or thwarted if compliance was required.

If compliance was required, it would essentially require the new development to be demolished and redesigned. The development provides a functional development on the site that complies with the requirements of Ryde Local Environmental Plan and Ryde Development Control Plan with an outcome suitable for the applicants. The proposed STRATA subdivision does not change this outcome."

The applicant notes that the underlying purpose of limiting subdivision is to prevent the fragmentation of land. Torrens title subdivision would result in fragmenting the land with irregular lot sizes. However, the proposed strata subdivision allows joint management and maintenance of the building and does not fragment the land.

The dual occupancy (attached) development was designed to meet the principal development standards within the RLEP 2014 and the development controls within RDCP 2014. The orientation of the allotment and its irregular shape resulted in a design response where the lot size for each dwelling differs significantly (324m<sup>2</sup> and 249m<sup>2</sup>), compared to a similar development on a regular shaped lot. To achieve a suitable front setback to Vimiera Road, the building is sited with the party wall positioned closer to the eastern side boundary than the front boundary to Vimiera Road. The building is also designed with a substantial setback to the southern property boundary to allow for usable rear private open space areas that will receive access to sunlight.

If the minimum 290m<sup>2</sup> lot size was strictly applied in this circumstance, the party wall would be located further to the west. This would result in the amenity of Unit 1 (with frontage to Vimiera Road) being impacted since it would likely require the building to be located closer to the southern boundary, resulting in a smaller rear private open space area for Unit 1 with less access to sunlight. In this instance, strict compliance with the development standard may not achieve the underlying objective of residential amenity.

Strata subdivision of a dual occupancy (attached) development allows for each proposed allotment to be leased or sold individually. If the minimum 290m<sup>2</sup> lot was strictly applied in this circumstance, the building would not be capable of being subdivided and sold separately and it could only be leased. Allowing for the existing building to be subdivided would promote the orderly and economic use of land in accordance with the objects of the Act.

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

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

Comment

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [26]. The adjectival phrase "environmental planning" is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in s1.3 of the EP&A Act.'

Section 1.3 Objects of Act of the EP&A Act reads as follows:

- a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.
- b) to facilitate ecologically sustainable development by integrating relevant economic, environmental, and social considerations in decision-making about environmental planning and assessment.
- c) to promote the orderly and economic use and development of land.
- d) to promote the delivery and maintenance of affordable housing.
- e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.
- f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage).
- g) to promote good design and amenity of the built environment.
- h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.
- i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State.

- j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicant's written request to vary Clause 4.1A states the following with respect to the objects of the Act:

- "The Environmental aspects and impacts of the proposal are outlined and addressed within this Statement. The proposed development will have no detrimental impact on natural or other resources, with a Planning Use that complements the site and area and existing infrastructure.
- The development is orderly and rational, being consistent with the applicable Ryde City Council planning controls in the R2 Low Density Residential Zone.
- The development maintains housing and the site is located in a residential area.
- There are no threatened species or the like in the area to be developed. The development will not have an environmental impact in relation to noise or air emissions. The site will maintain landscaped as part of the development.
- The site is not a heritage item or within proximity to a heritage item or located within a heritage conservation area.
- The proposal shows care and consideration for the existing and desired character of housing in the area. This ensures the amenity of the local area is reasonably protected.
- The proposal will utilise high quality building materials and finishes. It will be designed to meet BCA criteria and access considerations to ensure appropriate protection to the health and safety of occupants.
- The process has allowed consideration of both State and Local Government environment.
- This application will be exposed to public comment in the usual manner, as outlined in the Development Control Plan."

The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by clause 4.6(3)(b).

The applicant's written requests have demonstrated that the proposed development is an orderly and economic use and development of the land. Further, the development provides for a high level of amenity and a built environment that is responsive to the characteristics of this corner site and is in character with the low density residential area. Therefore, the proposal and the written request satisfy objectives 1.3(c) and (g) and Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(b).

### **Conclusion to Clause 4.6 Consideration**

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

The applicant's Clause 4.6 written request to vary the Clause 4.1A *Dual occupancy (attached) subdivisions* is acceptable as it demonstrates that strict compliance with this development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening this development standard.

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

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

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

There are no relevant draft Environmental Planning Instruments for consideration.

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

The provisions of DCP 2014 have been considered in the assessment under LDA2016/0185 for the dual occupancy (attached) development. The development remains consistent with the aims and objectives of RDCP 2014. The proposed strata title subdivision is subject to the provisions of Clause 4.1A of RLEP 2014 and not subject to the provisions of Section 2.4 – Subdivision of RDCP 2014.

#### **5.6 Planning Agreements OR Draft Planning Agreements**

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

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

Development contributions were applicable for LDA2016/0185 for the dual occupancy (attached) development since the additional dwelling results in a net increase in residents on the land. The subject strata title subdivision application is exempt from the development contributions plan as it does not result in an increase in dwellings.

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

#### **Environmental Planning and Assessment Regulation 2021**

The Regulation underpins the day-to-day operation of the NSW planning system. The Regulation guides the processes, plans, public consultation, impact assessment and decisions made by local councils, the Department of Planning and others. There are no applicable Clauses contained within the regulations which are relevant to the proposed subdivision.

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

The assessment demonstrates that the proposal will not have any significant adverse impacts upon any adjoining properties or the environment in general due to the nature of the development. All relevant issues regarding environmental impacts of the development are discussed elsewhere in this report. The subdivision is considered satisfactory in terms of environmental impacts.

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

The site is zoned R2 Low Density Residential. The proposal is for strata title subdivision of a dual occupancy (attached). The proposal has been supported by a Clause 4.6 written variation that justifies the contravention of the development standard for dual occupancy (attached) subdivisions with regard to minimum lot size. The assessment demonstrates the proposal will not result in any significant adverse impacts upon adjoining properties or the streetscape. The proposal is an appropriate development and this has been demonstrated in this report. The proposal is considered to be suitable for the site.

## **8. The Public Interest**

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

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

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

## **10. Referrals**

### **Senior Development Engineer**

No objection was raised by Council's Senior Development Engineer, subject to conditions of consent which are provided at **Attachment 1**.

## **11. Conclusion**

After consideration of the development against section 4.15 of the Environmental Planning and Assessment Act 1979 and the relevant statutory and policy provisions, the proposal is suitable for the site and is not contrary to the public interest. Therefore, it is recommended that the application be approved for the following reasons:

- The proposal is consistent with the objectives for R2 zoned land.
- The proposal has been supported by a satisfactory Clause 4.6 written request to vary Clause 4.1A of the Ryde Local Environmental Plan 2014 which demonstrates that

compliance is both unreasonable and unnecessary and has provided sufficient environmental planning grounds to support the variation.

- The proposal complies with the statutory provisions set out in the Environmental Planning and Assessment Act 1979.
- The proposal is considered to be low impact to adjoining properties and surrounding environment.
- The proposal is not contrary to the public interest.

## 12. Recommendation

- A. That the Ryde Local Planning Panel accepts that the Clause 4.6 written request to vary the development standard in clause 4.1A *dual occupancy (attached) subdivisions* in Ryde Local Environmental Plan 2014 has adequately addressed the matters in subclause (3); would not be contrary to the public interest; and is consistent with the objectives of the R2 Low Density Residential zone.
- B. That the Ryde Local Planning Panel as the consent authority grant development consent to Local Development Application No. LDA2024/0057 for strata title subdivision of an existing dual occupancy (attached) on land at 72 Vimiera Road, Eastwood, subject to the draft conditions of consent contained in **Attachment 1**.

## ATTACHMENTS

- 1 **Draft Conditions of Consent**
- 2 **Proposed plans**
- 3 **Clause 4.6 written variation request to development standard for dual occupancy (attached) subdivisions**

Report prepared by:

**Deren Pearson**  
**Town Planner**

Report approved by:

**Holly Charalambous**  
**Senior Coordinator Development Assessment**

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

## GENERAL CONDITIONS

	Condition																				
1)	<p><b>Approved plans and supporting documentation</b></p> <p>Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin: 10px 0;"> <thead> <tr> <th colspan="5" style="text-align: left;">Approved plans</th> </tr> <tr> <th style="width: 15%;">Plan Number</th> <th style="width: 10%;">Revision Number</th> <th style="width: 30%;">Plan Title</th> <th style="width: 25%;">Drawn by</th> <th style="width: 20%;">Date of Plan</th> </tr> </thead> <tbody> <tr> <td>220043 SP-01</td> <td style="text-align: center;">-</td> <td>Plan of Subdivision of Lot 2 in DP 225956 – Location Plan</td> <td>Ziemowit Tomasz Wierchowski</td> <td>21<sup>st</sup> March 2024</td> </tr> <tr> <td>220043 SP-01</td> <td style="text-align: center;">-</td> <td>Plan of Subdivision of Lot 2 in DP 225956 – Ground Floor Plan</td> <td>Ziemowit Tomasz Wierchowski</td> <td>21<sup>st</sup> March 2024</td> </tr> </tbody> </table> <p>In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.</p> <p><b>Condition Reason:</b> To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.</p>	Approved plans					Plan Number	Revision Number	Plan Title	Drawn by	Date of Plan	220043 SP-01	-	Plan of Subdivision of Lot 2 in DP 225956 – Location Plan	Ziemowit Tomasz Wierchowski	21 <sup>st</sup> March 2024	220043 SP-01	-	Plan of Subdivision of Lot 2 in DP 225956 – Ground Floor Plan	Ziemowit Tomasz Wierchowski	21 <sup>st</sup> March 2024
Approved plans																					
Plan Number	Revision Number	Plan Title	Drawn by	Date of Plan																	
220043 SP-01	-	Plan of Subdivision of Lot 2 in DP 225956 – Location Plan	Ziemowit Tomasz Wierchowski	21 <sup>st</sup> March 2024																	
220043 SP-01	-	Plan of Subdivision of Lot 2 in DP 225956 – Ground Floor Plan	Ziemowit Tomasz Wierchowski	21 <sup>st</sup> March 2024																	

## BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

	Condition
2)	<p><b>Occupation certificate</b></p> <p>Prior to the issue of a subdivision certificate, a full (not partial) occupation certificate associated with the approved development (including related modifications) must be issued for the development prior to the release of the subdivision certificate. All conditions required to be satisfied prior to the issue of an Occupation Certificate related to all development on the site must be satisfied.</p> <p><b>Condition Reason:</b> To ensure that the development works are fully completed and that should the new lot come under separate ownership, such owners will not be burdened by outstanding works.</p>
3)	<p><b>Final plan of subdivision (Title Details)</b></p> <p>The final plan of subdivision must note all existing and/or proposed easements, positive covenants and restrictions of the use of land relating to the title.</p> <p><b>Condition Reason:</b> To disclose any easements or covenants burdening the land.</p>
4)	<p><b>88B Instrument</b></p> <p>Prior to the issuing of a subdivision certificate, the submission of an instrument under Section 88B of the Conveyancing Act 1919 creating any Easements, Positive Covenants and Restrictions on use (where required) noting the “Council of the City of Ryde” being the authority empowered to release vary or modify the same.</p>



	Condition
	<b>Condition Reason:</b> To facilitate the registration of any instrument accompanying the subdivision certificate.
5)	<p><b>Subdivision Certificate (Compliance Certificates)</b></p> <p>Prior to the issue of a subdivision certificate, the following compliance certificates must be provided to City of Ryde:</p> <ul style="list-style-type: none"> <li>a) Surveyor Certification – A registered surveyor must certify that necessary easements have been created for all services and structures which encroach into adjacent lots and that all remaining services, dwelling and structures are contained wholly within their respective allotments.</li> <li>b) Sydney Water (Section 73 Compliance Certificate) - A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water will determine the availability of water and sewer services, which may require extension, adjustment or connection to Sydney Water mains.</li> <li>c) Ausgrid (Notification of Arrangements for the Provision of Electricity Supply) - A completed Notification of Arrangements (NOA) notice must be obtained from Ausgrid to confirm that satisfactory arrangements have been made with Ausgrid for the provision of an adequate electricity supply in relation to the proposed development/subdivision</li> </ul> <p><b>Condition Reason:</b> To ensure the newly created lots have access to and can maintain essential services.</p>
6)	<p><b>Boundary Fences</b></p> <p>Prior to the issue of a subdivision certificate, a Boundary Identification Survey (BIS) must be undertaken to confirm the location of the fence(s) relative to the public domain. The survey must be undertaken by a Registered Surveyor and is to clarify any encroachment of posts, gates, etc. Any encroachment will need to be corrected unless otherwise approved to remain by Council’s City Infrastructure Department.</p> <p><b>Condition Reason:</b> To ensure the boundary fence is clear of the public domain.</p>
7)	<p><b>Fibre-ready facilities and telecommunications infrastructure</b></p> <p>Prior to the issue of any subdivision certificate satisfactory evidence is to be provided to the principal certifier that arrangements have been made for:</p> <ul style="list-style-type: none"> <li>a) The installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre-ready facilities to be readily connected to any premises that is being or may be constructed on those lots. Alternatively, demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose and;</li> <li>b) 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.</li> </ul> <p>Note: real estate development project has the meanings given in Section 372Q of the Telecommunications Act 1997.</p> <p><b>Condition Reason:</b> Statutory requirement.</p>
8)	<b>Stormwater Management (Proof of Positive/ Restrictive Covenant(s))</b>

	Condition
	<p>Prior to the issue of a subdivision certificate, any Positive or Restrictive Covenant(s) relating to particular stormwater components, system configurations and flood measures as required by the City of Ryde DCP Part 8.2 Stormwater and Floodplain Management must be registered on the subject lot. Copies of the endorsed instruments (including terms) and the Title Certificate must be provided with the application for the Subdivision Certificate for City of Ryde approval.</p> <p><b>Condition Reason:</b> This is to ensure that the drainage system and / or flood mitigation measures will be maintained throughout the life of the development by the owner of the site(s).</p>
9)	<p><b>Easement for Overhang</b></p> <p>Prior to the issuing of a subdivision certificate, an Easement for Overhang must be defined over any structure overhanging an alternate lot. The easement must be defined on the plans. Any additional terms are subject to City of Ryde approval.</p> <p><b>Condition Reason:</b> To ensure the benefitted lot owner has an ability to maintain the structure over the alternate lot whilst the burdened lot owner is not imposed upon greatly by such works.</p>
10)	<p><b>Easement for Drainage of Water</b></p> <p>Prior to the issue of a subdivision certificate, should any portion of the drainage system servicing one of the lots traverse the alternate lot(s), an Easement for Drainage of Water must be created over the respective part(s) of the drainage system on the alternate lot. Where the subdivision will result in rainwater storage/ detention tanks straddling the new lot boundaries, a reciprocal drainage easement must be created over the storage, allowing each lot to drain over the alternate lot and warranting shared responsibility in maintenance of the system. The easement width, location and alignment must be in accordance with City of Ryde's DCP Parts 8.2 Stormwater and Floodplain Management and Part 8.4 Title Encumbrances and is to be based on recent Works-As-Executed plans of the stormwater system. "Council of the City of Ryde" must be listed as the prescribed authority to release or vary the terms of the easement.</p> <p>Plans and documentation complying with this condition must be submitted with the application for a Subdivision Certificate.</p> <p><b>Condition Reason:</b> To ensure drainage services and conveyance of stormwater runoff are maintained.</p>
11)	<p><b>Building Code of Australia</b></p> <p>Prior to the issue of a subdivision certificate, certification from a suitably qualified accredited building consultant is required to be submitted to the principal certifier confirming that the development is compliant with the current version of the National Construction Code (NCC) for the following:</p> <ul style="list-style-type: none"> <li>a) Separating Wall. The wall separating the two dwellings has an FRL (Fire Resistance Level) of not less than 60/60/60 extending from the ground to the underside of the roof cladding.</li> <li>b) Smoke Alarms. The smoke alarms in each dwelling are connected to the consumer mains power and are interconnected as there are alarms on each floor level.</li> </ul> <p><b>Condition Reason:</b> To ensure that the building complies with the Building Code of Australia requirements.</p>
12)	<p><b>Official Property Addressing</b></p>

	Condition
	Prior to the issue of a subdivision certificate, the administration sheet or strata plan must be prepared in accordance with the official address provided by Council's Spatial Data Services.
	<b>Condition Reason:</b> To assist in way finding.

### General advisory notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the [Conditions of development consent: advisory notes](#). The consent should be read together with the *Conditions of development consent: advisory notes* to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.

## Dictionary

The following terms have the following meanings for the purpose of this determination (except where the context clearly indicates otherwise):

**Approved plans and documents** means the plans and documents endorsed by the consent authority, a copy of which is included in this notice of determination.

**AS** means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

**Building work** means any physical activity involved in the erection of a building.

**Certifier** means a council or a person that is registered to carry out certification work under the *Building and Development Certifiers Act 2018*.

**Construction certificate** means a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation and *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

**Council** means the City of Ryde.

**Court** means the Land and Environment Court of NSW.

**EPA** means the NSW Environment Protection Authority.

**EP&A Act** means the *Environmental Planning and Assessment Act 1979*.

**EP&A Regulation** means the *Environmental Planning and Assessment Regulation 2021*.

**Independent Planning Commission** means Independent Planning Commission of New South Wales constituted by section 2.7 of the EP&A Act.

**Local planning panel** means Ryde Local Planning Panel.

**Occupation certificate** means a certificate that authorises the occupation and use of a new building or a change of building use for an existing building in accordance with this consent.

**Principal certifier** means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

**Site work** means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

**Stormwater drainage system** means all works and facilities relating to:

the collection of stormwater,

the reuse of stormwater,

the detention of stormwater,

the controlled release of stormwater, and

connections to easements and public stormwater systems.

**Strata certificate** means a certificate in the approved form issued under Part 4 of the *Strata Schemes Development Act 2015* that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

**Subdivision certificate** means a certificate that authorises the registration of a plan of subdivision under Part 23 of the *Conveyancing Act 1919*.

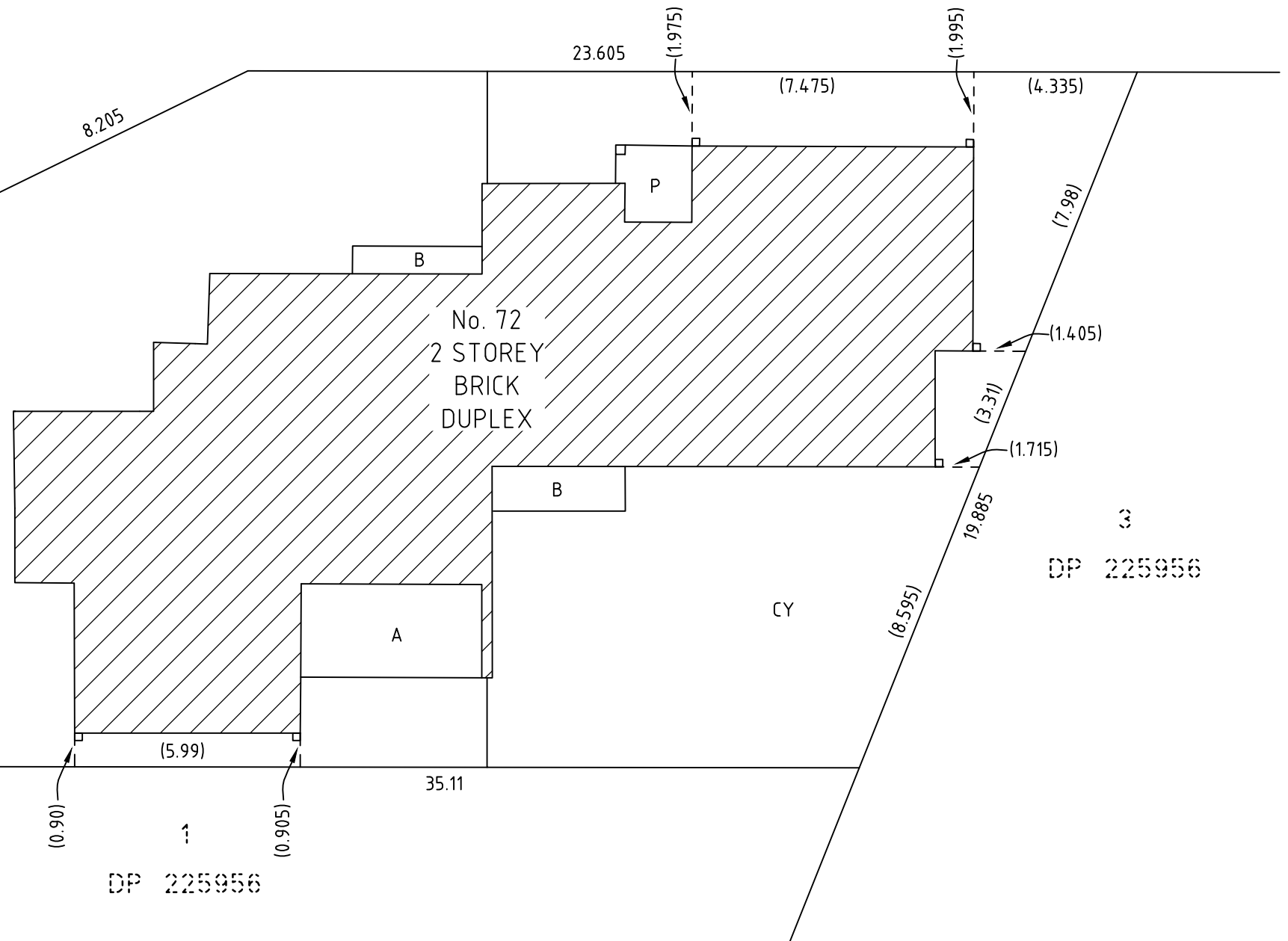
**Subdivision works certificate** means a certificate to the effect that subdivision work completed in accordance with specified plans and specifications will comply with the requirements of the EP&A Regulation.

**Sydney district or regional planning panel** means Sydney North Planning Panel (SNPP).

LOCATION PLAN

DEBORAH PLACE

VIMIERA ROAD



NOTES:

- CY - DENOTES COURTYARD
- P - DENOTES PORCH
- A - DENOTES ALFRESCO
- B - DENOTES BALCONY

└ - DENOTES RIGHT ANGLE

EXTERNAL BOUNDARIES OF THE LOTS COINCIDE WITH PARCEL BOUNDARY

Surveyor: **Ziemowit Tomasz Wierzchowski**  
 Date: **21st March 2024**  
 Surveyor's Ref: **220043 SP-01**

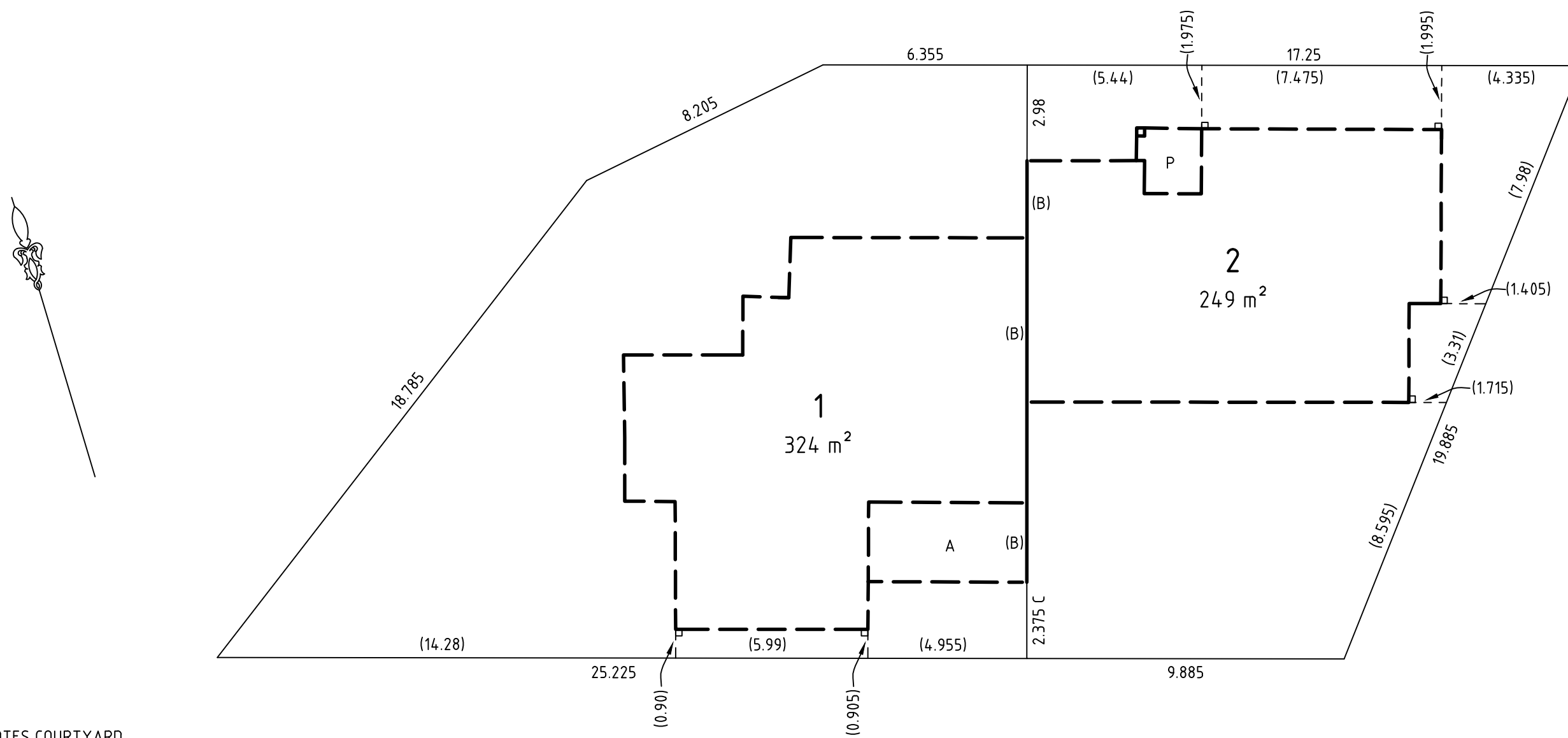
**PLAN OF SUBDIVISION OF  
 LOT 2 IN DP 225956**

L.G.A.: **RYDE**  
 Locality: **EASTWOOD**  
 Subdivision No:  
 Lengths are in metres. Reduction Ratio 1:150

Registered

**SP DRAFT**

GROUND FLOOR PLAN



NOTES:

- CY - DENOTES COURTYARD
- P - DENOTES PORCH
- A - DENOTES ALFRESCO
- C - DENOTES PROLONGATION OF CENTRELINE OF WALL
- (B) - DENOTES COMMON WALL IS COMMON PROPERTY
- └ - DENOTES RIGHT ANGLE

NOTES:

1. AREAS SHOWN ARE FOR THE PURPOSE OF STRATA SCHEMES DEVELOPMENT ACT 2015 AND ARE APPROXIMATE ONLY.
2. THE STRATUM OF LOTS 1 & 2 IS LIMITED IN HEIGHT TO 12 METRES ABOVE AND IN DEPTH TO 7 METRES BELOW FROM THE UPPER SURFACE OF IT'S RESPECTIVE UNITS' GROUND FLOOR LEVEL
3. ANY STRUCTURE OF THE BUILDING OR OTHER STRUCTURE STANDING ON EACH LOT FORMS PART OF THAT LOT AND IS NOT COMMON PROPERTY EXCEPT COMMON WALL STANDING ON THE BOUNDARY BETWEEN LOT 1 & 2 WHICH IS COMMON PROPERTY.
4. ANY UTILITIES LOCATED WITHIN THE LOT SERVICING ANOTHER LOT ARE COMMON PROPERTY.
5. COMMON SERVICE LINES ARE COMMON PROPERTY

Surveyor: **Ziemowit Tomasz Wierchowski**  
 Date: **21st March 2024**  
 Surveyor's Ref: **220043 SP-01**

**PLAN OF SUBDIVISION OF  
 LOT 2 IN DP 225956**

L.G.A.: **RYDE**  
 Locality: **EASTWOOD**  
 Subdivision No:  
 Lengths are in metres. Reduction Ratio 1:150

Registered

**SP DRAFT**

## Request to vary a development standard

Mar-24

**SITE:** 72 Vimiera Place, Eastwood

**PROPOSAL:** Strata Subdivision

**RE:** 4.6 Variation to Clause 4.1A Dual occupancy (attached) subdivisions

The Standard Instrument – Principal Local Environmental Plan (Standard Instrument LEP) and other environmental planning instruments set out development standards that must be met before a consent authority, such as a local council, can grant development consent to a development application (DA). Clause 4.6 of the Standard Instrument LEP allows consent authorities to grant consent to development that contravenes one or more development standards.

Clause 4.6 provides flexibility in the application of development standards. However, confusion around the application of clause 4.6 has contributed to delays, cost burdens and litigation for applicants and councils.

In response, the Department of Planning & Environment have amended clause 4.6 – and similar provisions in non-standard local environmental plans (LEPs) and state environmental planning policies (SEPPs) – to simplify requirements and to make the clause easier to interpret.

They have also made changes to reporting requirements for councils and the approach that the Department of Planning and Environment will take to monitoring and auditing variations decisions. This is to ensure there is appropriate probity, accountability and transparency to maintain confidence in the planning system.

This letter supports a written request to vary the development standard prescribed in the **Ryde Local Environmental Plan 2014** applying to the proposed **Strata Subdivision at 72 Vimiera Place, Eastwood**.

This submission should be read in conjunction with the Statement of Environmental Effects, architectural plans and other consultant's reports.



## 4.6 Exceptions to Development Standards

### 4.6 Exceptions to development standards

*(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.*

This request is for the contravention of clause **4.1A Dual occupancy (attached) subdivisions** imposed by **Ryde Local Environmental Plan 2014**. Clause **4.1A Dual occupancy (attached) subdivisions (Strata)** is not expressly excluded from the operation of this clause.

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

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

This report serves as a written request from the applicant. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case is as outlined in this report. This report also outlines the environmental planning grounds to justify contravening the development standard.

*(4) Development consent must not be granted for development that contravenes a development standard unless—*

- (a) the consent authority is satisfied that—*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Planning Secretary has been obtained.*

The matters in Subclause 3 have been addressed in this report. This report also outlines compliance with 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) Repealed*

Noted.

*(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*

*(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*

*(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Not proposed.

*(7) Repealed*

Noted.

*(8) This clause does not allow development consent to be granted for development that would contravene any of the following—*

*(a) a development standard for complying development,*

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

*(c) clause 5.4,*

*(caa) clause 5.5,*

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

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

*(cc) clause 6.9.*

Not proposed. The variation is for Clause 4.1A to the extent that that it applies to the STRATA subdivision of a dual occupancy (attached)

This variation request has been prepared based on the requirements of the “Guide to Varying Development Standards” prepared by the NSW Department of Planning & Environment, November 2023.



## Site and proposed development

### 1. Describe the site.

The site is situated between Epping, Marsfield and Eastwood, north of Eastwood local centre.

### Neighbourhood Scale & Streetscape

The area showcases a variety of buildings and architectural styles, contributing to its visual diversity. The subdivision patterns encompass various residential properties, offering housing options tailored to different preferences. The topography of the area includes varying elevations and views, enhancing the natural characteristics of the surroundings. Indigenous vegetation and well-maintained landscapes further contribute to the visual appeal, creating an inviting and aesthetically pleasing urban environment.

The locality is characterised by similar lot sizes and frontages, containing both older and newer single and double storey dwellings, with associated pools, outbuildings and attached and detached garages.

### Site Scale

Lot 2 DP 225956 (72 Vimiera Road, Eastwood) is a corner allotment with a total area of 576.4m<sup>2</sup> and a 18.795m primary frontage to Vimiera Road, and a 17.250m secondary frontage to Deborah Place. The site has little slope of note. The proposed site previously contained a single dwelling house and now contains a double storey attached Dual Occupancy with access from Vimiera Road and Deborah Place.

The front of the site includes overhead power lines that run the length of Vimiera Road. The site is not identified as a heritage item, adjoining or adjacent a heritage item or within a heritage conservation area. The site is not identified as being bushfire prone land but is flood affected. The site is not identified as containing biodiversity and riparian lands.

### 2. Describe the proposed development.

The development proposes Strata subdivision consisting:

Lot 21:

- 324sqm

Lot 22:

- 249sqm

### 3. What is the environmental planning instrument/s you are seeking to vary?

The name of the environmental planning instrument that applies to the land is **Ryde Local Environmental Plan 2014**.



#### **4. What is the site's zoning?**

The zoning of the land is R2 Low Density Residential

#### **5. Identify the development standard to be varied.**

The development standard being varied is:

##### ***4.1A Dual occupancy (attached) subdivisions***

*Despite clause 4.1, development consent may be granted for the Torrens title subdivision of a lot or subdivision of a lot under the Strata Schemes Development Act 2015 if—*

*(a) before the day Ryde Local Environmental Plan 2014 (Amendment No 28) commences, a development application for a dual occupancy (attached) has been approved and an occupation certificate has been issued for that development, and—*

- (i) the lot to be subdivided has an area of at least 580 square metres, and*
- (ii) 1 dwelling will be situated on each lot resulting from the subdivision, and*
- (iii) each resulting lot will have an area of not less than 290 square metres, or*

*(b) on or after the day Ryde Local Environmental Plan 2014 (Amendment No 28) commences, a development application made for a dual occupancy (attached) has been approved for the lot, and—*

- (i) the lot has an area of at least 580 square metres, and*
- (ii) 1 dwelling will be situated on each lot resulting from the subdivision, and*
- (iii) each resulting lot will have an area of not less than 290 square metres, and*
- (iv) the primary road frontage of each resulting lot will be equal to or greater than 7.5 metres.*

The application is being made on or after the day Ryde Local Environmental Plan 2014 (Amendment No 28) commences and

- (i) the lot has an area less than 580 square metres, and,
- (ii) 1 dwelling will be situated on each lot resulting from the subdivision, and
- (iii) each resulting lot will NOT have an area of more than 290 square metres (Lot 21: 324sqm, Lot 22: 249sqm) and
- (iv) the primary road frontage of each resulting lot will be equal to or greater than 7.5 metres.

#### **6. Identify the type of development standard.**

Numerical development standards use numbers to specify requirements (often minimum or maximum requirements) for measuring components of a site and/or development. Examples are minimum lot size requirements or building height limits.

Non-numerical development standards generally contain criteria or matters that need to be satisfied. These standards are typically found in the local provisions of a LEP and vary between LEPs.



The standard is a numeric standard.

## 7. What is the numeric value of the development standard in the environmental planning instrument?

The proposed development is for STRATA subdivision. The application is being made on or after the day Ryde Local Environmental Plan 2014 (Amendment No 28) commences and

- (i) the lot has an area less than 580 square metres, and,
- (ii) 1 dwelling will be situated on each lot resulting from the subdivision, and
- (iii) each resulting lot will NOT have an area of more than 290 square metres (Lot 21:324sqm, Lot 22: 249sqm) and hence the reason for this variation.**
- (iv) the primary road frontage of each resulting lot will be equal to or greater than 7.5 metres.

### Note:

There was a rounding error on the original DP. The area calculated from bearing and distances on the original DP was 576.8m<sup>2</sup> but after preparing the plan of subdivision by survey, it was reduced by further 0.4m<sup>2</sup> resulting in a site area of 576.4m<sup>2</sup>. The areas of subdivision are areas excluding the Partition Wall.

## 8. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

The proposal is less than the required 290sqm development standard by 41sqm, which is a percentage variation of 14.1%.

## 9. Visual representation of the proposed variation (if relevant)

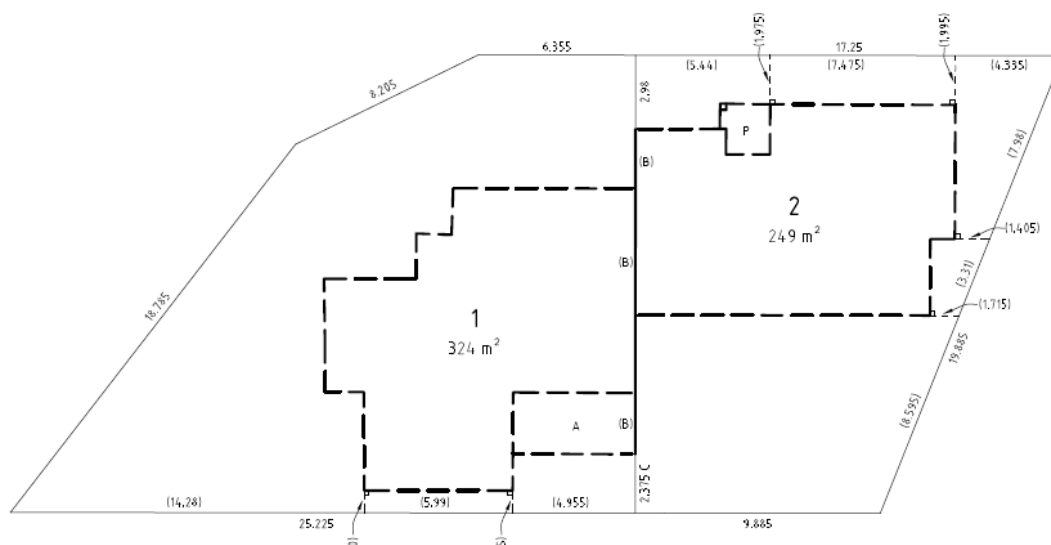


Figure 1. Proposed Subdivision of 72 Vimiera Place, Eastwood (Ziemowit Wierzchowski)

## Justification for the proposed variation

### 10. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

With respect to clause 4.6(3)(a), the common ways to establish whether compliance with the development standard is unreasonable or unnecessary is known as the '5-part test' or the 'Wehbe test' (from the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827).

The test can be summarised as follows:

Compliance with the development standard is unreasonable or unnecessary if the:

1. *objectives of the development standard are achieved notwithstanding the non-compliance*
2. *underlying objective or purpose is not relevant to the development*
3. *underlying objective or purpose would be defeated or thwarted if compliance was required*
4. *development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard*
5. *zoning of the land on which the development is proposed was unreasonable or inappropriate.*

In this regard, this written request establishes and adequately addresses the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary because pursuant to the ways outlined in Wehbe:

There are no objectives for this clause.

#### *2. underlying objective or purpose is not relevant to the development*

It is understood that the underlying purpose of limiting subdivision is to prevent the fragmentation of land. The site contains an approved dual occupancy and the applicant seeks STRATA subdivision relating to that dual occupancy. The subdivision will not cause the fragmentation of land. The STRATA subdivision is considered to promote the orderly and economic use and development of land whereby the subdivision will allow each of the units of the dual occupancy to be sold individually while maintaining a shared responsibility for the maintenance of the development.

#### *3. underlying objective or purpose would be defeated or thwarted if compliance was required.*

If compliance was required, it would essentially require the new development to be demolished and redesigned. The development provides a functional development on the site that complies with the requirements of Ryde Local Environmental Plan and Ryde Development Control Plan with an outcome suitable for the applicants. The proposed STRATA subdivision does not change this outcome.

## 11. Are there sufficient environmental planning grounds to justify contravening the development standard?

The term 'environmental planning grounds', while not defined in the EP&A Act or the Standard Instrument – Principal Local Environmental Plan, refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act. The scope of environmental planning grounds is wide as exemplified by the court decisions in this area.

The objects of the Act are as follows—

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

- The Environmental aspects and impacts of the proposal are outlined and addressed within this Statement. The proposed development will have no detrimental impact on natural or other resources, with a Planning Use that complements the site and area and existing infrastructure.
- The development is orderly and rational, being consistent with the applicable Ryde City Council planning controls in the R2 Low Density Residential Zone.
- The development maintains housing and the site is located in a residential area.
- There are no threatened species or the like in the area to be developed. The development will not have an environmental impact in relation to noise or air emissions. The site will maintain landscaped as part of the development.
- The site is not a heritage item or within proximity to a heritage item or located within a heritage conservation area.
- The proposal shows care and consideration for the existing and desired character of housing in the area. This ensures the amenity of the local area is reasonably protected.



- The proposal will utilise high quality building materials and finishes. It will be designed to meet BCA criteria and access considerations to ensure appropriate protection to the health and safety of occupants.
- The process has allowed consideration of both State and Local Government environment.
- This application will be exposed to public comment in the usual manner, as outlined in the Development Control Plan.

## **Ecologically Sustainable Development**

Ecologically Sustainable Development (ESD) is a key object of the Environmental Planning & Assessment Act, 1979. The definition, consideration and conceptualisation of ESD was well explained by Justice Preston in *Telstra Corporation Limited v Hornsby Shire Council* [2006] NSWLEC 133.

This included the “basic formulation” of “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”:

Six Principles can be considered and applied:

- 1. Sustainable use - the aim of exploiting natural resources in a manner which is “sustainable” or “prudent” or “rational” or “wise” or “appropriate”*
- 2. Effective integration of economic and environmental considerations in the decision making process*
- 3. The precautionary principle (referred to in 6(2)(a) of the Protection of the Environment Administration Act)*
- 4. Inter-generational equity - the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations*
- 5. Conservation of biological diversity and ecological integrity should be a fundamental consideration; and*
- 6. Internalisation of environmental costs into decision-making for economic and other development plans, programmes and projects likely to affect the environment.*

The proposal is consistent with the principles of ESD as it does not exploit natural resources, it has been based soundly on economic and environmental considerations, the likely environmental impacts of the proposal are well understood and predictable, it doesn't deplete, does not unreasonably affect biological diversity or ecological integrity, and it provides an enduring asset for future generations.





## 12. Is there any other relevant information relating to justifying a variation of the development standard?

Lot 2 DP 225956 (72 Vimiera Place, Eastwood) is a corner allotment with a total area of 576.4m<sup>2</sup> and a 18.795m primary frontage to Vimiera Road, and a 17.250m secondary frontage to Deborah Place. The site has little slope of note. The proposed site previously contained a single dwelling house and now contains a double storey attached Dual Occupancy with access from Vimiera Road and Deborah Place.

The development proposes a **Strata Subdivision**

The site is suitable for the development being compatible with the objectives of the zone. The development is compatible with the locality and the site attributes are conducive to development.

The proposed development is permissible with consent and complies with the objectives of the zone by providing a variety of housing types to satisfy the needs of the community, that ensures amenity for both the occupants and the surrounding neighbours, that is compatible with the density of the area.

The front of the site includes overhead power lines that run the length of Vimiera Road. The site is not identified as a heritage item, adjoining or adjacent a heritage item or within a heritage conservation area. The site is not identified as being bushfire prone land but is flood affected. The site is not identified as containing biodiversity and riparian lands.

The proposed development is consistent with the existing and future development in the locality. The development has access from a public road and Council's utility services are available to the site. The site is considered to be suitable for development. The proposed development is within the public interest.



## Conclusion

The proposed development has been designed in a way that it addresses the site abilities and constraints whilst satisfactorily demonstrating compliance with the Environmental Planning and Assessment Act 1979 (EPA&A 1979) and Council's local planning instruments and guidelines.

Accordingly, this 4.6 Exceptions to Development Standards is submitted in the belief that it deserves council's favourable consideration.

Yours Faithfully,



Tania Hannaford  
(Bach.UrbRegPlanning (MPIA), Dip.Proj.Management, Cert IV NatHERS Assessment)

### **Plan for Tomorrow™**

**M:** +61 402 422 745

**E:** [Tania@plan-for-tomorrow.com](mailto:Tania@plan-for-tomorrow.com)

**W:** [www.plan-for-tomorrow.com](http://www.plan-for-tomorrow.com)

*Plan for Tomorrow has not undertaken a site visit for the purposes of this report. This report is provided exclusively for the purposes described in this report. No liability is extended for any other use or to any other party. The report is based on conditions prevailing at the time of the report and information provided by the client. The report is only for which the land to which the report relates and only for the day it is issued. This report should be read in conjunction with submitted documents and plans relevant to the Application.*

