

Bayside Planning Panel

22/05/2018

Item No	6.3
Application Type	Development Application
Application No	DA-2017/501
Lodgement Date	05/10/2017
Property	41 Lynesta Avenue, Bexley North
Ward	Rockdale
Owner	Mr Thanh Duc Quach and Mrs Trang Thi Thu Quach
Applicant	Mr Thang Duc Quach
Proposal	Demolition of existing structures and construction of a two (2) storey attached dual occupancy and Torrens Title subdivision.
No. of Submissions	Nil
Cost of Development	\$758022
Report by	Teresita Chan, Student Planner

Officer Recommendation

- 1 That the Bayside Planning Panel supports the variation to Clause 4.1(3B)(a) in accordance with the Clause 4.6 justification provided by applicant; and
 - 2 That the development application DA-2017/501 for the demolition of existing structures and construction of a two (2) storey attached dual occupancy and Torrens Title subdivision at 41 Lynesta Avenue, Bexley North be APPROVED pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
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Location Plan



Attachments

- 1 Assessment Report
- 2 Revised Site Analysis Plan
- 3 Revised Roof Plan
- 4 Revised Elevations Plan
- 5 Torrens Title Subdivision Plan
- 6 Updated 4.6 Variation
- 7 Revised Landscape Plan
- 8 Updated Shadow Diagram
- 9 1st Assessment Report

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2017/501
Date of Receipt:	5 October 2017
Property:	41 Lynesta Avenue, BEXLEY NORTH (Lot 18 DP 35230)
Owner(s):	Mr Thanh Duc Quach Mrs Trang Thi Thu Quach
Applicant:	Mr Thanh Duc Quach
Proposal:	Demolition of existing structures and construction of a two (2) storey attached dual occupancy and Torrens Title subdivision
Recommendation:	Approved
No. of submissions:	Nil
Author:	Teresita Chan
Date of Report:	27 April 2018

Key Issues

This development application was referred to the Bayside Planning Panel (BPP) on 13 February 2018 with a recommendation for refusal, as the proposal failed to comply with the numerical provisions of Clause 4.1(3B)(a) of Rockdale Local Environmental Plan 2011 (RLEP 2011) in regard to minimum subdivision lot size for a dual occupancy development. The minimum lot size required is 350sq.m. per lot. The applicant had incorrectly submitted a Clause 4.6 for the variation based on a definition of semi-detached dwellings and not attached dual occupancy. The proposal seeks to create two new lots with sizes 276.21sq.m and 311.99sq.m.

At the meeting the BPP resolved:

The Bayside Planning Panel defers this matter to allow the applicant the opportunity to submit amended plans and a Clause 4.6 variation. The amended plans are to have regard to the sensitivity of the site in terms of topography and the adjoining properties in terms of the streetscape and setbacks. The Panel is of the view that the elevation to the streetscape is to be more articulated. The applicant is to provide amended plans and documentation to the Council within six weeks to allow further assessment and determination .

The applicant has provided a set of amended documentation on 22/03/2018; which includes an updated Clause 4.6 justification to the variation to the minimum subdivision size for a dual occupancy development under Clause 4.1(3B)(a), a Statement of Environmental Effects, and architectural and landscape plans. The amended information has addressed issues raised by the BPP in regard to front setbacks, facade articulation and streetscape.

The proposal includes two x 3 metres driveways, separated by a distance of 2.084m. This does not comply with Rockdale Technical Specification Traffic, Parking and Access, Part 4.1.5(ii); which requires a minimum separation distance between driveways of 6 metres at the kerb to allow on street parking. As such a condition of consent has been imposed to require a combined single driveway with a maximum width at the boundary of 5 metres.

Recommendation

1. That the Bayside Planning Panel supports the variation to Clause 4.1(3B)(a) in accordance with the Clause 4.6 justification provided by applicant; and
2. That the development application DA-2017/501 for the demolition of existing structures and construction of a two (2) storey attached dual occupancy and Torrens Title subdivision at 41 Lynesta Avenue, Bexley North be APPROVED pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.

Background

History

Council's records show that the following application was previously lodged:

- An application under the Infrastructure SEPP (ISP-2012/1) for demolition of the existing dwellings, removal of trees and the construction of six(6) new dwellings with associated four(4) parking spaces, which included the subject site and adjacent site at 39 Lynesta Street Bexley North.

Timeline of the assessment process is stated as follows:

5/10/2017 - Development application lodged
19/10/2017 - Notification period ended
12/10/2017 - Letter to Applicant requesting withdrawal of the application
16/11/2017 - Meeting with Council's Manager Development Services and applicant
15/12/2017 - Amended Statement and Environmental Effects (SEE) and a legal opinion letter submitted by applicant
13/02/2018 - Amended set of architectural plan submitted
13/02/2018 - Bayside Planning Panel meeting - DA determination deferred
05/03/2018 - Meeting with Manager of Development Services, Coordinator of Development assessment and Student Planner
22/03/2018 - Amended documentation submitted. The main changes include:

- Greater front setback for both dwellings
- Dwelling B was further recessed from the front boundary
- More landscaping at the front

Proposal

Council is in receipt of a development application DA-2017/501 at 41 Lynesta Avenue, Bexley North, which seeks consent to carry out demolition of existing structures and construction of a two(2) storey

attached occupancy and Torrens Title subdivision.

Specifically, the proposal consists of:

Dwelling 1 on Allotment A

Ground floor:

- One(1) Lounge area
- One(1) Dining area, comprising with an open kitchen
- One(1) Laundry room
- One(1) powder room
- One(1) Guest Room
- A driveway

First Floor:

- Two(2) bedrooms with robes
- One(1) master bedroom with en-suite and robes
- One(1) bathroom
- A balcony

Dwelling 2 on Allotment B

Ground floor:

- One(1) Lounge area
- One(1) Dining area, comprising with an open kitchen
- One(1) Laundry room
- One(1) powder room
- One(1) Guest Room
- A driveway

First Floor:

- Two(2) bedrooms with robes
- One(1) master bedroom with en-suite and robes
- One(1) bathroom
- A balcony

Torrens Title Subdivision

The proposal proposes to subdivide the land into two(2) parcels- 41 and 41A Lynesta Avenue. The size of the resulting allotments are stated as follows:

Allotment A (Dwelling A): 276.21 sq.m

Allotment B (Dwelling B): 311.99 sq.m

Fencing

The proposal includes a 1.8m high colorbond fence along the side and rear boundaries and an a 0.9m high colorbond fence along the side boundaries of the front setback as shown on the landscape plan.

Use of materials and finishes

The use of materials and finishes of the proposed development are primarily rendered masonry,

comprising of painted finishes , fixed and openable glass windows and colour-bond roof.

Trees and vegetation

The proposal does not involve any removal of trees. The landscape plan shows the existing Jacaranda Tree at the rear is to be retained and additional trees and vegetation are proposed to be planted in the rear yards and within the front setback.

Site location and context

The subject site is known Lot 18 DP 35230, 41 Lynesta Avenue, Bexley North. The site is an irregular hexagon shaped with front boundary widths of 20.115 m, and rear boundary width of 15.24 m, and 4.88 metres. The side boundaries are 27.385 m deep. The total site area is 588.2 sq.m. The topography of the site is such that it is falling gradually from the rear to the front by approximately 3 metres.

The subject site contains a single(1) storey residential dwelling, with a detached metal shed at the rear. The site is located on the south eastern side of Lynesta Avenue, between Edward Street and Lynesta Avenue. Adjoining development to the sides includes a two storey dual occupancy approved in 2006 on a site with an area of approximately 560sq.m. and a one(1) storey residential dwelling. A two(2) storey residential dwelling is situated on the rear property. There is a mix of one to two storey residential dwellings and dual occupancies along Lynesta Avenue.

The subject site is located within 150 metres radius of Gilchrist Park and Bexley Bowling Club.

There is a eight(8) m high Jacaranda tree located in the South East corner of the site, which is to be retained in the proposal. No removal of trees have been proposed.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

S4.15 (1) - Matters for Consideration - General

S4.15 (1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The applicant has submitted a multi dwelling BASIX Certificate for the proposed development. The Certificate number is 854934M.

The commitments made result in the following reductions in energy and water consumption:

Reduction in Energy Consumption 54%

Reduction in Water Consumption 41%

Thermal Comfort Pass

In this regard, the proposal satisfies the provision and objectives of this SEPP.

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) applies to the proposal. The site contains trees that are subject to approval by Council under clause 4.1.7 of Rockdale Development Control Plan 2011, conferred by:

- (a) development consent, or
- (b) a permit granted by Council.

No removal of trees and vegetation have been proposed in this development application.

Council's Tree Management Officer has recommended appropriate conditions that have been included in the draft conditions of consent, regarding the protection and retention of existing trees.

Subject to compliance with the conditions of consent, the proposal is satisfactory in relation to SEPP (Vegetation in Non-Rural Areas) 2017 and Clause 4.1.7 of the Rockdale DCP2011

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R2 Low Density Residential	Yes	Yes - see discussion
2.6 Subdivision - consent requirements	Yes	Yes - see discussion
2.7 Demolition requires consent	Yes	Yes - see discussion
4.1 Minimum subdivision lot size	No - see discussion	No - see discussion
Dual occupancy	No - see discussion	No - see discussion
4.3 Height of buildings	Yes	Yes - see discussion
4.4 Floor space ratio - Residential zones	Yes	Yes - see discussion
4.6 Exceptions to development standards	Yes	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.4 Airspace operations	Yes	Yes - see discussion
6.12 Essential services	Yes	Yes - see discussion

2.3 Zone R2 Low Density Residential

The subject site is zoned R2 - Low Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as Dual occupancy which constitutes a permissible development only with development consent. The objectives of the 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 ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.

The proposed development is consistent with the objectives of the zone.

2.6 Subdivision - consent requirements

The development application is seeking Council's approval for the Torrens Title Subdivision of the lots. In accordance with Clause 2.6(1) - Subdivision of Rockdale Local Environmental Plan 2011 (RLEP 2011), *'Land to which this Plan applies may be subdivided, but only with development consent.'*

Hence, the subject site can only be subdivided with development consent.

2.7 Demolition requires consent

The proposed development seeks consent for the demolition of all existing structures on site. Hence satisfies the provisions of this Clause.

4.1 Minimum subdivision lot size

Clause 4.1(3B)(a) requires a minimum subdivision lot size of 350sq.m. for dual occupancies. The proposal results in subdivision lot sizes of 276.21 sq.m and 311.99 sq.m and does not comply with this clause.

Dual occupancy

The proposed variation of each allotment has been calculated as follows:

Allotment A

276.21 sq.m = 21.08% under the 350 sq.m minimum subdivision lot size

Allotment B

311.99 sq.m = 10.86% under the 350 sq.m minimum subdivision lot size

To achieve the 350sq.m. lot size required under this clause, the overall lot size should be 700sq.m. The existing lot is 588.2 sq.m., which represents 111.8 sq.m deficiency of the required 700 sq.m to permit subdivision.

The applicant has submitted Clause 4.6 justification seeking a variation to the minimum subdivision lot size. Refer to the later part of the assessment report for details.

4.3 Height of buildings

The height of the proposed building is 7.9 m and therefore does not exceed the maximum 8.5m height shown for the land on the Height of Buildings Map.

The proposal complies with the development standard and therefore satisfies this Clause.

4.4 Floor space ratio - Residential zones

The Gross Floor Area (GFA) has been calculated as follows:

Allotment A(Dwelling 1): Site area= 276.21 sq.m

Ground Floor:

65.5 sq.m

First Floor:

66.5 sq.m

Total GFA: 132 sq.m

FSR of Dwelling1 (GFA of Dwelling 1/ Size of allotment A): 0.48:1

Allotment B (Dwelling 2): Site area= 311.99 sq.m

Ground Floor:

73.4 sq.m

First Floor:

71.2 sq.m

Total GFA: 144.6 sq.m

FSR of Dwelling 2 (GFA of Dwelling 2/ Size of allotment B): 0.46:1

The Gross floor area of the proposed development has been calculated as 276.6 sq.m over a site area of 588.2 sq.mn. In this regard, the proposed overall floor space ratio (FSR) for the building is 0.47:1 and therefore does not exceed the maximum FSR for the land 0.5:1 as shown on the Floor Space Ratio Map.

As such, the proposal is satisfied with Clause 4.4- Floor Space Ratio of Rockdale Local Environmental Plan 2011.

4.6 Exceptions to development standards

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

(3)(a) that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and

(3)(b) that there are sufficient environmental planning grounds to justify the variation.

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

(a) the consent authority must be satisfied that:

(i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, 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 of the relevant zone.

5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and

5(b) the public benefit of maintaining the development standard.

Development Standard to be varied

The applicant seeks variation to Clause 4.1(3B)(a)- Minimum subdivision lot size, which states:

(3B) Despite sub clause (3), development consent may be granted to the subdivision of a lot on which there is an existing dual occupancy, or on which a dual occupancy is proposed, if:

- (a) the area of each lot resulting from the subdivision is equal to or greater than 350 square metres, and
- (b) each of the lots will have one of the dwellings on it.

The subject site has a lot size area of 588.4 sq.m and the subdivided resulting allotments are 311.99 sq.m and 276.21 sq.m. Both allotments fail to satisfy the 350 sq.m minimum subdivision lot size by 10.86% and 21.08% respectively.

Justification for the variation

The applicant has provided an amended version of Clause 4.6 for the proposed variation to the minimum lot size for a dual occupancy. The applicant states:

- Clause 4.1 (3B) is a development standard rather than a prohibition. Therefore, capable of being varied by operation of Clause 4.6 of the RLEP 2011
- The proposed development is compatible with the predominant subdivision pattern of the locality
- The proposed development has satisfactorily developed full compliance with other development controls
- The shape of the subject site is unique
- The objectives of the development standard are achieved notwithstanding the non compliance with the standard.
- This is a type of development that is contemplated by the zoning and objective of Clause 4.1 (1), and consistent with the zoning objectives
- The allotment is a suitable size and shape to support the dual occupancy development and fully complies with all other development controls such as landscape area, FSR and setbacks. The proposed development would not be inconsistent with the typical subdivision character of Lynesta Avenue
- It would be unreasonable and unnecessary to require strict compliance with the development standard as the site is not unduly constrained by its size or shape to accommodate the proposed development which is permissible and meets the objectives of Clause 4.1
- Low density is a matter of perception viewed from the street and architectural plans accord with the visual characteristics of "low density"
- The existing area supports a varied outcome of allotments and built form and the proposed development is consistent with an established precedent in the immediate vicinity of the site, as well as in the surrounding Bexley North locality. There are two dual occupancy developments already approved and built in Lynesta Avenue
- The subject site has a land parcel shape which is an anomaly when considered in the context of the surrounding subdivision pattern, as well as in the broader Bexley North locality
- Subdivision pattern and density evolve over time. There are examples of smaller subdivided lot size within the locality.
- The subject site has a significant wider site frontage than other properties on Lynesta Avenue
- The built form is determined to be an appropriate outcome for the site, subdivision is a secondary consideration. The proposed development complies with the height, bulk, minimum frontage, setbacks, landscape and open space controls contained in RDCP 2011
- The allotment is a suitable size and shape to support the dual occupancy development and the landscape area provided meets Council's minimum requirements of 25%
- A development that strictly complied with the minimum lot size would not be discernible in the

streetscape. The lack of depth across the entire rear/ southern boundary could not be appreciated from the street. The numerical non compliance is an abstract notion, the compliance is unnecessary and unreasonable particularly as a highly-compliant physical development will be achieved at the site which is a more tangible measure of acceptability within the streetscape

- The proposed development remains consistent with the objectives of the R2- Low Density Residential Zone despite the numerical non-compliance with the minimum lot size
- A compliant proposal would produce a poorer streetscape outcome than the proposed development application as the resultant building would be larger and bulkier and would have a more dominant visual impact in the street
- The proposed development will not result in significant adverse impacts upon the locality or adjacent residential properties by way of overshadowing, view loss, privacy, bulk and scale regardless of whether the land subdivided or not. In this regard, strict adherence to the minimum lot size serves no planning purpose, where it is in this case, a direct function of an acceptable built form
- The proposed development does not result in the loss of public or private view

Assessment Comments

A detailed assessment of all the information provided by the applicant on 22/03/2018 against all relevant environmental planning instruments has been carried out. Consideration was given to case law under Four2Five Pty Ltd where it was established that it was necessary to demonstrate special circumstances of the development; which would warrant the variation to the development standard rather than merely achieving compliance with the objectives of the zone and development standard. Consideration was also given to State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Low Rise Medium Density Housing) 2017 gazetted on 6 April 2018 commencing on 6 July 2018. This policy will allow the subdivision as proposed in this application.

The applicant has addressed satisfactorily CI 4.6(3a) and (3b) in arguing that there are sufficient environmental planning grounds to justify the variation and that compliance with the standard is unreasonable and unnecessary in the circumstances of the case. It is noted that the clause 4.6 is now based on the proper characterization of the development as a dual occupancy.

The proposed development has demonstrated full compliance with other development standards, which includes height, FSR, setbacks, private open space, landscaping area, solar access, privacy and acoustic controls despite the non compliance of minimum lot size. The proposed development is consistent with the objectives of the particular standard and the objectives of the relevant zone and is in the public interest. As such the proposed variation is supported in this instance.

6.2 Earthworks

Earthworks including excavation are required on site for footings and slabs. The objectives and requirements of Clause 6.2 of RLEP 2011 have been considered in the assessment of this application. It is considered that the proposed earthworks and excavation will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 100 metres to Australian Height Datum (AHD). The proposed building height is at 7.6 metres to AHD, with RL 35.428 and in this regard, it is considered that the proposed development will have minimal adverse impact on the OLS and hence is acceptable with regards to this Clause.

6.12 Essential services

Services will generally be available on the site.

S4.15(1)(a)(ii) - Provisions of any Draft EPI's

No relevant proposed instruments are applicable to this proposal.

S4.15 (1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Rockdale Development Control Plan 2011

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.3 Flood Risk Management	Yes	No - see discussion
4.1.4 Soil Management	Yes	Yes - see discussion
4.1.7 Tree Preservation	Yes	Yes - see discussion
4.1.9 Lot size and Site Consolidation - Dual Occupancy	No - see discussion	No - see discussion
4.2 Streetscape and Site Context - General	No - see discussion	Yes - see discussion
4.3.1 Open Space & Landscape Design - Low & medium density residential	Yes	Yes - see discussion
4.3.2 Private Open Space - Low density residential	Yes	Yes - see discussion
4.4.2 Solar Access - Low and medium density residential	Yes	Yes - see discussion
4.4.3 Natural Lighting and Ventilation - Residential	No - see discussion	No - see discussion
4.6 Parking Rates - Dual Occupancy	Yes	Yes - see discussion
4.6 Car Park Location and Design	Yes	Yes
4.6 Driveway Widths	Yes	Yes - see discussion
4.7 Air Conditioning and Communication Structures	Yes	Yes
4.7 Waste Storage and Recycling Facilities	Yes	Yes
4.7 Laundry Facilities and Drying Areas	Yes	Yes
5.1 Storey Height and Setbacks - Dual occupancy & Semi-detached dwelling	Yes	Yes - see discussion
5.1 Residential Subdivision	Yes	Yes - see discussion

4.1.3 Flood Risk Management

The subject site is classified as being affected by the 1% Annual Exceedance Probability (A.E.P) flood. The applicant has provided a revised set of architectural plans to indicate the Final Floor Level (FFL). They have been reviewed and assessed by Council's Development Engineer, and conditions have been imposed to ensure it is in compliant with the controls and standards.

4.1.4 Soil Management

The Soil & Water Management Plan has been submitted and general erosion and sediment control strategies are proposed to ensure that the potential for impact on adjoining land and surrounding waterways is minimised.

In this regard, the proposed development is considered to satisfy this clause.

4.1.7 Tree Preservation

The development proposal does not involve any removal of trees and vegetation. Council's Tree Management Officer has recommended the protection and retention of existing Jacaranda tree located at the rear of the site and trees adjoining the site.

4.1.9 Lot size and Site Consolidation - Dual Occupancy

The proposal seeks the Torrens Title Subdivision of the dual occupancy development into two(2) parcels, with the resultant lots having an area of 312 sq.m and 276 sq.m, which fails to satisfy the numerical control of this Clause. A minimum lot size of 700 sq.m and a minimum site frontage of 15 metres is required for a dual occupancy development. The subject lot has an area of 588.2 sq.m, and it is 111.8sq.m under the required 700 sq.m to permit subdivision. The subject site has a street frontage of 20.115 m and complies with the minimum frontage requirement.

4.2 Streetscape and Site Context - General

The proposal is located in a R2- Low Density Residential Zone. The immediate context is relatively low scale, consisting of single(1) storey and two (2) storey residential dwellings and dual occupancy development.

A revised set of architectural plans has been submitted to improve the overall visual quality of the proposed building and streetscape by implementing plantings at the frontage, greater recess of Dwelling B to provide sufficient articulation, and to further setback both Dwelling A and Dwelling B to minimise the predominance of the building in the streetscape.

As such, the proposal is considered to be acceptable under the circumstances in this case.

4.3.1 Open Space & Landscape Design - Low & medium density residential

The proposal includes a landscaped area of 168. 7 sq.m. The proposed open space and landscape design satisfy the minimum 25% landscaped area on site, hence complies with the Clause.

4.3.2 Private Open Space - Low density residential

The proposal has a proposed private open space of 120 sq.m, which satisfies the minimum private open space of 80 sq.m. Thus, complies with objectives and controls of the Clause.

4.4.2 Solar Access - Low and medium density residential

The applicant has submitted a set of shadow diagrams, showing the overshadowing impacts of March 22 and June 22 from 9 a.m to 3 p.m. The proposed dual occupancy development will be overshadowing the property on 43 & 43A Lynesta Avenue and 39 Lynesta Avenue. The detailed description of the overshadowing impacts are illustrated as follows:

At 9 a.m- June 22

The proposed development will be overshadowing 1/2 of the two(2) storey dual occupancy dwelling and the private open space of 43 & 43A Lynesta Avenue.

The impacted windows are located on the Eastern elevation and Southern elevation of the building.

At 12 p.m- June 22

There are no adverse impacts on the adjoining buildings.

At 3 p.m- June 22

The proposed development will be overshadowing one(1) window on the western elevation of the single(1) storey residential dwelling on 39 Lynesta Avenue. In addition, 80% of the private open space of 39 Lynesta Avenue will receive inadequate solar access as well.

Whilst there are overshadowing impacts on the adjoining dwellings, properties on 43& 43A Lynesta Avenue and 39 Lynesta Avenue will be able to receive a minimum of three(3) hours direct sunlight in habitable rooms and at least 50% of the private open space between 9am and 3pm in mid winter. Therefore, the proposal is considered to have minimal impact on the level of sunlight currently received by adjoining properties and complies with the Clause.

4.4.3 Natural Lighting and Ventilation - Residential

A minimum ceiling height of 2.7m is required for habitable rooms. The ceiling height of the proposed development have been stated as follows:

Ground Floor: 2.7 metres

First Floor: 2.7m

The proposed ceiling height is in compliant with the control.

4.6 Parking Rates - Dual Occupancy

The development will have minimal impact on access, parking and traffic in the area. Two carparking spaces are proposed per dwelling in accordance with Council's DCP 2011. The proposal is satisfactory in regards to traffic and parking.

4.6 Driveway Widths

The proposal involves two individual access driveways of width 3 metres each at the boundary, and a separation width of 2.084 metres. As advised by Council's Development Engineer, the proposed development failed to satisfy the control. Therefore, relevant conditions have been imposed to ensure the requirements are to be adhered with prior to the issue of Construction Certificate (CC) and Occupation Certificate (OC).

5.1 Storey Height and Setbacks - Dual occupancy & Semi-detached dwelling

The setbacks have been measured as follows:

Side setbacks

Ground Floor: 0.9m

First Floor: 1.5m

Rear Setbacks

Dwelling A:

Ground floor: 7.4 m

First floor: 7.3m

Dwelling B:

Ground Floor: 13.885m

First Floor: 13.7m

Front setback

It is noted that Dwelling B is further recessed to allow better articulation. As such, there will be difference between Dwelling A's front setback and Dwelling B's.

Dwelling A: 8.7m

Dwelling B: 9.5m

The proposed setbacks comply with DCP2011.

5.1 Residential Subdivision

The subject site has a street frontage of 20.115 m.

S4.15(1)(a)(iv) - Provisions of regulations

Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of *AS 2601:1991 - Demolition of Structures* when demolition of a building is involved.

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

4.15(1)(b) - Likely Impacts of Development

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls. The impacts that have not already been addressed are as follows:

Construction

The residential building is to be constructed in brick and roof tiles with metal sheets, and timber floors. There are no specific issues relating to the BCA in the proposed design.

Site and safety measures to be implemented in accordance with conditions of consent and Workcover Authority guidelines/requirements.

S4.15(1)(c) - Suitability of the site

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

S4.15(1)(d) - Public submissions

The development has been notified in accordance with the provisions of Rockdale DCP 2011. Council did not receive any submissions on this proposal.

S4.15(1)(e) - Public interest

The proposed development is considered satisfactory having regard to the objectives and requirements of Rockdale Local Environmental Plan 2011 and Development Control Plan 2011. Impacts on adjoining properties have been considered and addressed. As such it is considered that the proposed development is in the public interest.

S7.11 Contribution towards provision or improvement of amenities or services

A Section 7.11 Contribution Payment of \$6114.61 is payable in accordance with Council's Policy and accordingly, imposed as a condition on the draft conditions of consent.

Schedule 1 - Draft Conditions of consent

General Conditions

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan/Dwg No.	Drawn by	Dated	Received by Council
Site Plan/ Drawing No: CD-02/Rev I	C.L	20/03/2018	22/03/2018
Site Analysis Plan/ Drawing No: CD-03/ Rev I	C.L	20/03/2018	22/03/2018
Ground Floor Plan/ Drawing No: CD-05/ Rev I	C.L	20/03/2018	22/03/2018
First Floor Plan/ Drawing No: CD-06/ Rev I	C.L	20/03/2018	22/03/2018
Roof Plan/ Drawing No: CD-07/ Rev I	C.L	20/03/2018	22/03/2018
North and South Elevation Plan/ Drawing No: CD-08/ Rev I	C.L	20/03/2018	22/03/2018
East and West Elevations/ Drawing No: CD-09/ Rev I	C.L	20/03/2018	22/03/2018
Material Schedule/ Drawing No: CD-08/ Rev I	C.L	20/03/2018	22/03/2018

Streetscape Elevation Plan/ Drawing No: CD-11/ Rev I	C.L	20/03/2018	22/03/2018
Section A&B/ Drawing No: CD-12/ Rev I	C.L	20/03/2018	22/03/2018
Section C&D/ Drawing No: CD-13/ Rev I	C.L	20/03/2018	22/03/2018
Driveway Plan/ Drawing No: CD-14/ Rev I	C.L	20/03/2018	22/03/2018
Driveway Section Plan/ Drawing No: CD-15/ Rev I	C.L	20/03/2018	22/03/2018
Driveway Section Plan/ Drawing No: CD-16/ Rev I	C.L	20/03/2018	22/03/2018
Demolition Plan/ Drawing No: CD-20/ Rev I	C.L	20/03/2018	22/03/2018
Landscape Plan/Sheet 1-3/	Stride Landscape Design	14/03/2018	22/03/2018

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
4. A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.
5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 854934M other than superseded by any further amended consent and BASIX certificate.
Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -
 - (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.**Note:** Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."
 Note: For further information please see <http://www.basix.nsw.gov.au>.
6. Further alterations and/or additions to the subject building shall not be undertaken without first obtaining approval. This includes the fitting of any form of doors and/or walls.
7. The proposed balconies on the first floor shall not be enclosed at any future time without prior development consent.
8. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.
9. Excavation, filling of the site (with the exception of the area immediately under the building envelope), or construction of retaining walls are not permitted unless shown on the approved plans and authorised by a subsequent construction certificate.
10. Mail boxes must be installed along the street frontage of the property boundary in accordance with Australia Post Guidelines. Prominent house numbers are to be displayed, with a minimum number size of 150 mm in height for each number and letter in the alphabet.

11. The dwelling located on the western part of the site shall be known as 41A Lynesta Avenue and the dwelling located on the eastern part of the site shall be known as 41 Lynesta Avenue.
12. A combine driveway shall be designed with a maximum driveway width of 5 metres at the boundary. A landscaped strip separating the driveways is to be provided. Details shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Development specific conditions

The following conditions are specific to the Development Application proposal.

13. The front balconies shall not be enclosed without development consent.
14. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the detention system. The registered proprietor will:
 - (i) permit stormwater to be temporarily detained by the system;
 - (ii) keep the system clean and free of silt, rubbish and debris;
 - (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
 - (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
 - (v) not make any alterations to the system or elements thereof without prior consent in writing of the Council;
 - (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause;
 - (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
15. The rainwater tank shall be routinely de-sludged and all contents from the de-sludging process disposed – solids to the waste disposal and de-sludged liquid to the sewer.
16. Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997 or contravene provisions of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.
17. Temporary dewatering of the site to construct the subsurface structure is not permitted.
18. All proposed lights shall comply with the Australian Standard AS4282 - 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.
19. The development shall have an impact isolation between floors which achieves an Acoustical Star Rating of 5 in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC) in accordance with the

report by Ben White- Acoustic Logic Consultancy Pty Ltd, dated 25/09/2017 and received by Council on 06/10/2017.

20. Retaining walls over 600mm in height shall be designed and specified by a suitably qualified structural engineer.

Prior to issue of the construction certificate

The following conditions must be completed prior to the issue of the Construction Certificate.

21. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
 - i. A Footpath Reserve Restoration Deposit of \$2,570.00. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
 - ii. An environmental enforcement fee of 0.25% of the cost of the works.
 - iii. A Soil and Water Management Sign of \$18.00.
22. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
23. An application for Driveway Works (Public Domain Construction – Vehicle Entrance/Driveway Application) / Frontage Works (Public Domain Frontage Works Construction Application) shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary frontage works, egress paths, driveways and fences shall comply with the approval. A fee is payable to Council. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
24. A Section 7.11 contribution of \$6114.61 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of subdivision certificate / construction certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 7.11 contributions plan in the following manner:

Service Amend 5 fee	\$ 683.12
Open Space Fund Amend 5 Fee	\$ 3850.16
Streetscape Fund Amend 5 Fee	\$ 491.18
Pollution Control Management Amend 5 Fee	\$ 982.04
Admin & Management Amend 5 Fee	\$ 108.11

Total:

\$ 6114.61

Copies of Council's Section 94 (Section 7.11) Contribution Plans may be inspected at Council Section ('s Customer Service Centre, Administration Building, 444-446 Princes Highway, Rockdale.

25. A landscape plan, prepared by a qualified Landscape Architect or Landscape Designer/Consultant, shall be submitted to Council for approval with or before the application for a Construction Certificate. The plan shall be at a scale of 1:100 or 1:200 and comply with Rockdale Technical Specification Landscape and all other relevant conditions of this Consent.
26. A suitable qualified engineer is to certify that the structure can withstand the forces of floodwater, scour, debris and buoyancy in a 1% AEP flood event.
27. All building materials shall be flood resistant, or flood compatible to a height of 500mm above the 1% AEP flood, or flow level. All internal electrical switches, power points or similar utilities liable to flood damage shall be set at a minimum of 500mm above the 1% AEP flood, or flow level. Details shall be provided and approved prior to the issue of a construction certificate.
28. Prior to the issue of the Construction Certificate, the approved plans must be submitted to Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

Sydney Water's Tap in™ online service is available at:

<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

29. Prior to issue of the Construction Certificate, a longitudinal driveway profile shall be submitted to Principal Certifying Authority for assessment and approval. The profile shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with Council's Code. The profile shall be drawn to a scale of 1 to 25 and shall include all relevant levels, grades (%) and lengths.
30. Any part of the proposed building within 3m of the proposed detention tank or underground rainwater tank shall be constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the tank base. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
31. The driveway over the detention tank shall be either constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the trench base or constructed as a structural slab so that no load is transferred to the tank. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
32. Prior to the issue of the Construction Certificate, detailed drainage design plans generally in accordance with stormwater drainage plan prepared by SDS Engineering, job number 17180, DWG Number C001, issue C, dated 13/03/2018 for the management of stormwater are to be submitted to Principal Certifying Authority for assessment and approval with the following amendment:

- Drainage grates shall be provided on the driveway at the boundary of the property,

Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and drainage design calculations are to be submitted with the plans. Council's Rockdale Technical Specification Stormwater Management

sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management.

33. Prior to the issue of any construction certificate, a Flood Management Plan shall be provided for the development in accordance with the flood advice letter dated 5 April 2017. This flood management plan shall be provided to the satisfaction of the principal certifying authority.
34. Prior to the issue of any Construction Certificate, all retaining walls over 600mm in height shall be designed and specified by a suitably qualified structural engineer. Details shall be shown in the construction certificate documents to the satisfaction of the principal certifying authority prior to the issue of the construction certificate.

Prior to commencement of works

The following conditions must be completed prior to the commencement of works.

35. A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million.
36. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

37. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.
38. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - i. stating that unauthorised entry to the work site is prohibited, and
 - ii. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours. Any such sign is to be removed when the work has been completed. This condition does not apply to:
 - iii. building work carried out inside an existing building or

- iv. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
39. Prior to the commencement of work, a Tree Protection Zone shall be established with protective fences at least 1.5 metres high erected, at the greater of the drip line from the trunk, around the Jacaranda tree which is to be retained. The protective fences shall consist of parawebbing or chain wire mesh mounted on star pickets or similar metal posts, shall be in place prior to the commencement of any work on site and shall remain until the completion of all building and hard landscape construction. Excavations for services, waste bins, storage of materials and equipment, site residue, site sheds, vehicle access or cleaning of tools and equipment are not permitted within the Tree Protection Zone at any time.
40. Prior to the commencement of any work on site, a sign shall be placed in a prominent position on each protective fence identifying the area as a Tree Protection Zone and prohibiting vehicle access, waste bins, storage of materials and equipment, site residue and excavations within the fenced off area.
41. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
42. Where construction/building works require the use of a public place including a road or footpath, approval under Section 68 of the Local Government act 1993 for a Barricade Permit is to be obtained from Council prior to commencement of work. Details of the barricade construction, area of enclosure and period of work are required to be submitted to the satisfaction of Council.
43. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

During demolition / excavation / construction

The following conditions must be complied with during demolition, excavation and or construction.

44. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
45. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
46. For Class 1 and 10 structures, the building works are to be inspected during construction, by the principal certifying authority (or other suitably qualified person on behalf of the principal certifying authority) to monitor compliance with Council's approval and the relevant standards of construction encompassing the following stages:
- i. after excavation for, and prior to the placement of, any footings, and
 - ii. prior to pouring any in-situ reinforced concrete building element, and
 - iii. prior to covering the framework for any floor, wall, roof or other building element, and
 - iv. prior to covering waterproofing in any wet areas, and
 - v. prior to covering any stormwater drainage connections, and
 - vi. after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Documentary evidence of compliance with Council's approval and relevant standards of construction is to be obtained prior to proceeding to the subsequent stages of construction and copies of the documentary evidence are to be maintained by the principal certifying authority and be made available to Council officers upon request.

47. Upon inspection of each stage of construction, the Principal Certifying Authority (or other suitably qualified person on behalf of the Principal Certifying Authority) is also required to ensure that adequate provisions are made for the following measures (as applicable), to ensure compliance with the terms of Council's approval:
 - Sediment control measures
 - Provision of perimeter fences or hoardings for public safety and restricted access to building sites.
 - Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.
48. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system.
49. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
50. A Registered Surveyor's check survey certificate or compliance certificate shall be forwarded to the certifying authority detailing compliance with Council's approval at the following stage/s of construction:
 - i. After excavation work for the footings, but prior to pouring of concrete, showing the area of the land, building and boundary setbacks.
 - ii. Prior to construction of each floor level showing the area of the land, building and boundary setbacks and verifying that the building is being constructed at the approved level.
 - iii. Prior to fixing of roof cladding verifying the eave, gutter setback is not less than that approved and that the building has been constructed at the approved levels.
 - iv. On completion of the building showing the area of the land, the position of the building and boundary setbacks and verifying that the building has been constructed at the approved levels.
 - v. On completion of the drainage works (comprising the drainage pipeline, pits, overland flow paths, on-site detention or retention system, and other relevant works) verifying that the drainage has been constructed to the approved levels, accompanied by a plan showing sizes and reduced levels of the elements that comprise the works.
51. When soil conditions require it:
 - i. retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and
 - ii. adequate provision shall be made for drainage.
52. All contractors shall comply with the following during all stages of demolition and construction:
 - A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit.

Permits can be obtained from Council's Customer Service Centre.

- A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
- A current Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.

53. The following conditions are necessary to ensure minimal impacts during construction:

- i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
- ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
- iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
- iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
- vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
 - a) spraying water in dry windy weather
 - b) cover stockpiles
 - c) fabric fences

- vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.

- 54. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction. A copy of the sign is available from Council.
- 55. The Jacaranda tree located at the rear of the property shall not be removed or pruned, including root pruning, without the written consent of Council in the form of a Permit issued under Council's Development Control Plan 2011.
- 56. Existing site and/or street trees shall be adequately protected from damage during operations.
- 57. No trees located within the site, adjoining properties or Council's nature strip shall be removed or pruned without the prior written consent of Council in the form of a Permit issued under Council's Development Control Plan 2011.
- 58. Underground Services such as pipelines or cables to be located close to trees, must be installed by boring or by such other method that will not damage the tree rather than open trench excavation. The construction method must be approved by Council's Tree Management Officer.
- 59. Existing soil levels within the drip line of trees to be retained shall not be altered without reference to Council's Tree Management Officer.
- 60. Building materials, site residue, machinery and building equipment shall not be placed or stored under the dripline of trees required to be retained.

Prior to issue of occupation certificate or commencement of use

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

61. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
62. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
63. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.
Note: Burning on site is prohibited.
64. The approved recommendations from the Flood Management Plan shall be implemented prior to occupation.
65. All landscape works are to be carried out in accordance with the approved landscape plans prior to the issue of an Occupation Certificate for the approved development. The landscaping is to be maintained to the approved standard at all times.
66. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council.
67. Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or a private contractor. There are specific requirements for approval of private contractors.
68. A combined single access driveway of maximum width 5.0m at the boundary shall be provided for the site.
69. Prior to the issue of the Final Occupation Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.

It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

70. Prior to occupation, a registered surveyor shall certify that the driveway(s) over the footpath and within the property have been constructed in accordance with the approved driveway profile(s). The certification shall be based on a survey of the completed works. A copy of the certificate and a works-as-executed driveway profile shall be provided to Council if Council is not the Principal Certifying Authority.
71. Testing and evaluation of the wall insulation system is to be carried out at post construction stage by a suitably qualified acoustical engineer to show an Acoustical Star Rating of 5 has been achieved in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC) in accordance with the report submitted to Council with the Development Application. A report is to be submitted to the Principal Certifying authority prior to the issue of the Occupation Certificate.
72. A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.

73. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority (PCA) certifying that the habitable/commercial floor level is constructed a minimum of 500mm above the 1% Annual Exceedance Probability (A.E.P) Flood Level. A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.
74. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority certifying that the garage floor/parking level is either constructed at or above 1% A.E.P Annual Exceedance Probability (AEP) Flood Level. A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.
75. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
76. The development shall comply with Rockdale Development Control Plan (DCP) 2011, and the Planning Considerations and Development Controls listed in the Flood Advice letter issued by Council on 5 April 2017.
77. The drainage system shall be constructed in accordance with the approved drainage plans and any amendments in red. All stormwater drainage plumbing work shall comply with the NSW Code of Practice: Plumbing and Drainage and Australian Standard AS3500.

Drainage grates shall be provided at the boundary. Width of the drainage grates shall be in accordance with Rockdale Technical Specification Stormwater Management.

A silt/litter arrestor pit as detailed in Rockdale Technical Specification Stormwater Management shall be provided prior to discharge of stormwater from the site.

78. The owner of the premises is required to comply with the following requirements when installing a rainwater tank:
 - Inform Sydney Water that a Rainwater tank has been installed in accordance with applicable requirements of Sydney Water.
 - The overflow from the rainwater tank shall be directed to the storm water system.
 - All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.
 - A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.

Prior to issue of subdivision certificate

The following conditions must be complied with prior to the issue of the Subdivision Certificate or the Strata Certificate.

79. An 88B Instrument is to be provided for the right of carriageway and is to be lodged with the Subdivision/Strata Certificate.
80. Reciprocal rights of carriageway shall be provided over both allotments to allow manoeuvring into and out of the garages.
A 3x3m area to be designated as a reciprocal right of way for vehicle manoeuvring area from the front boundary internally along the common boundary for proposed lot 700 & 701. No structures and vertical obstructions are allowed within the right of way area.
These provisions are to be put into effect prior to release of the Subdivision/Strata Certificate.
81. The subdivision is to occur in accordance with Development Consent DA-2017/501 and any subsequent Section 4.55 modifications.
82. The endorsed subdivision certificate shall not be released until completion of the development and the issue of the Final Occupation Certificate.
83. The submission and approval of a subdivision certificate application. In this regard, a fee is payable in accordance with Council's current adopted Fees and Charges.
84. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to release of the Subdivision/Strata Certificate.

85. The new lots created are to be numbered lot 41 and lot 41A Lynesta Avenue.
86. All existing and proposed services on the property shall be shown on a plan, and shall be submitted to Council. This includes electricity, gas, water, sewer, stormwater and telephone services. Where any service crosses one lot but benefits another lot, it is to be covered by an easement. The service easement is to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Bayside Council. These provisions are to be put into effect prior to the release of the Subdivision/Strata Certificate.
87. A positive covenant shall be provided over the on-site detention system. A Section 88B Instrument and four copies shall be lodged with the Subdivision/Strata Certificate.
88. Council will not issue the Subdivision Certificate unless the following has been provided to Council :
- Works-As-Executed Plan for Stormwater Drainage System
 - Engineer's Compliance certificate for Stormwater Drainage System & work as executed drawing
 - Final Occupation Certificate
 - Utility Service Plan
 - Original of Section 73 Compliance Certificate referring to

Subdivision – (Sydney Water Act 1994)

- Landscape certification (if Council not appointed as PCA)
- Administration Sheet and 88B instruments prepared by a qualified surveyor

Roads Act

89. Construction related activities must not take place on the roadway without Council approval.

Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit.

Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Works Zone signs by Council's Traffic and Road Safety Section.

Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.

90. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:

- i) construction of a new fully constructed concrete vehicular entrance/s;
- ii) removal of the existing concrete vehicular entrance/s, and/or kerb laybacks, redundant paving which will no longer be required;
- iii) replace redundant layback with kerb and gutter;

91. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.
92. This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.
93. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.
94. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (not kikuyu).

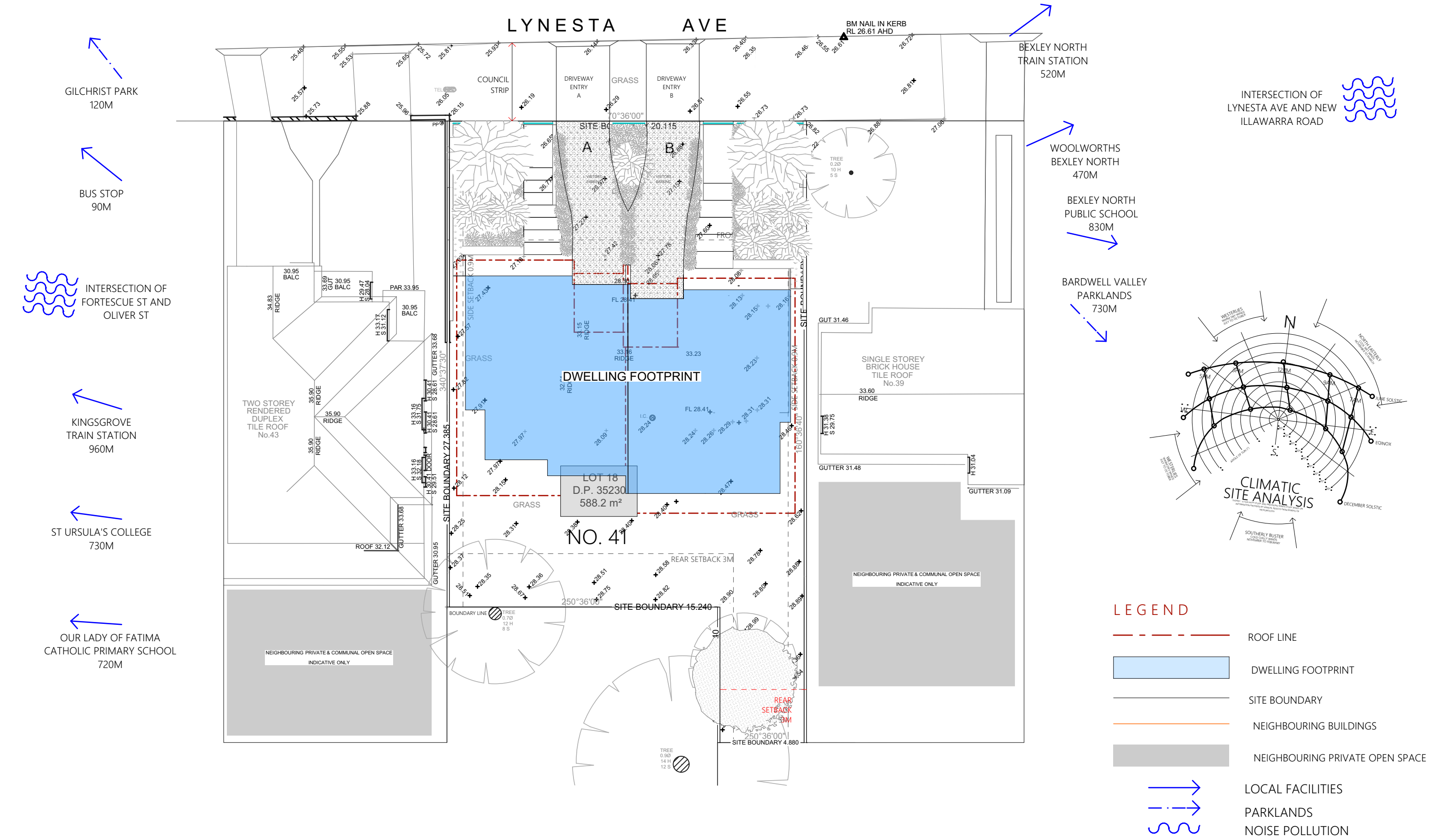
Development consent advice

- a. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- b. Where Council is not engaged as the Principal Certifying Authority for the issue of the Subdivision Certificate (Strata), and the Section 88B Instrument contains easements and/or covenants to which Council is a Prescribed Authority, the Council must be provided with all relevant supporting information (such as works-as-executed drainage plans and certification) prior to Council endorsing the Instrument.
- c. All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including:
 - Work Health and Safety Act 2011
 - Work Health and Safety Regulation 2011
 - Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)]
 - Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]
 - Protection of the Environment Operations (Waste) Regulation 2005

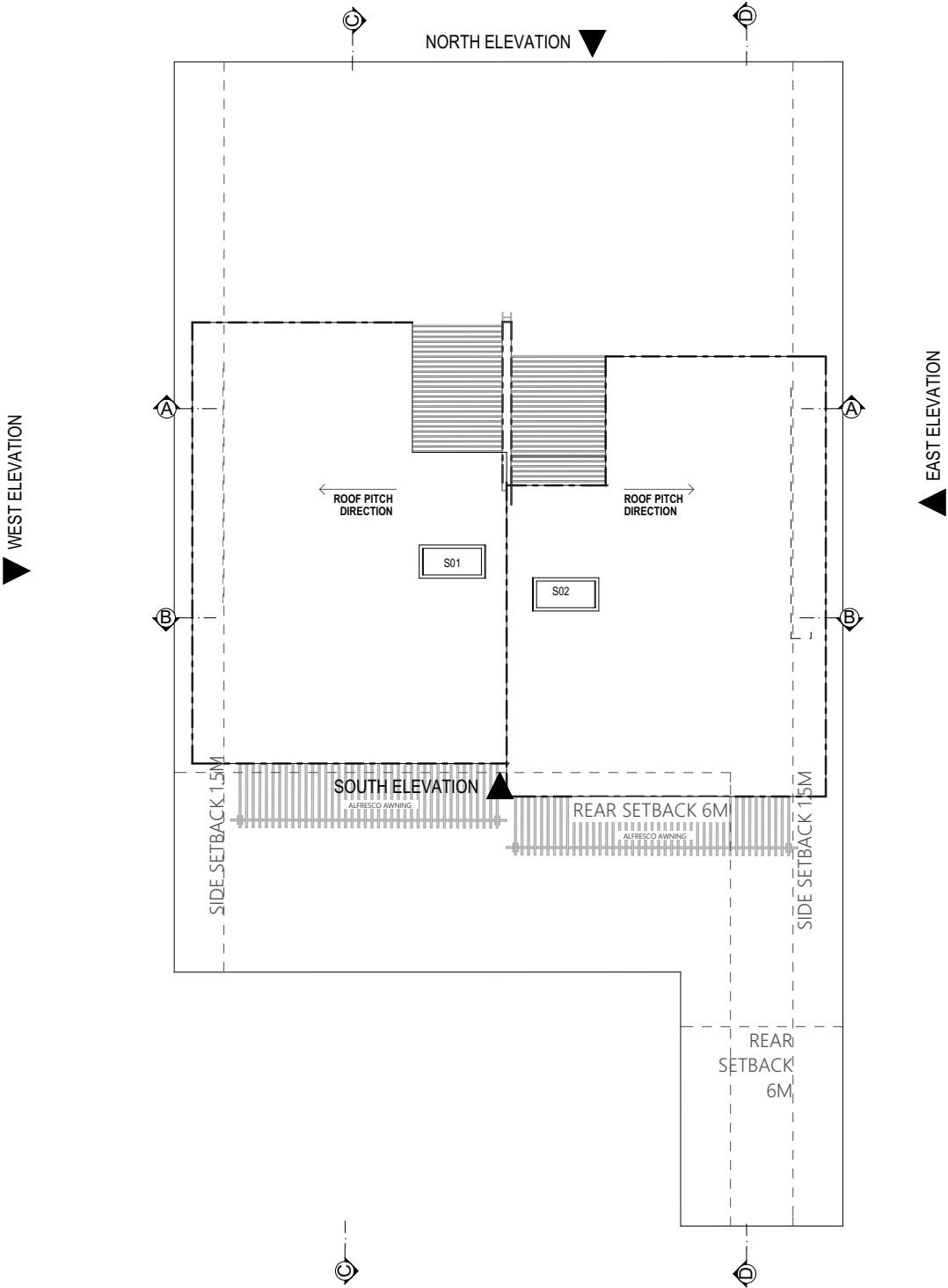
All work procedures shall be devised to minimise the release of dust and fibres. A checklist of safety precautions when working with asbestos is available in Health & Safety Guidelines prepared by the WorkCover Authority of NSW. Collection, storage and transportation is subject to the Protection of the Environment Operations (Waste) Regulation 2005.

- d. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:
 - Work Health and Safety Act 2011
 - Work Health and Safety Regulation 2011
 - Protection of the Environment Operations (Waste) Regulation 2005.
- e. Demolition and construction shall minimise the emission of excessive noise and prevent “offensive noise” as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:
 - choosing quiet equipment
 - choosing alternatives to noisy activities
 - relocating noise sources away from affected neighbours
 - educating staff and contractors about quiet work practices
 - informing neighbours of potentially noise activities in advance
 - equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.

- f. The water from the rainwater tank should not be used for drinking, Sydney Water shall be advised of the installation of the rainwater tank.
- g. The removal, cleaning and disposal of lead-based paint shall conform with the requirements of the NSW Environment Protection Authority's guideline - "Lead Alert - Painting Your Home".
- h. All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.
- i. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.



BASIX CERTIFICATE

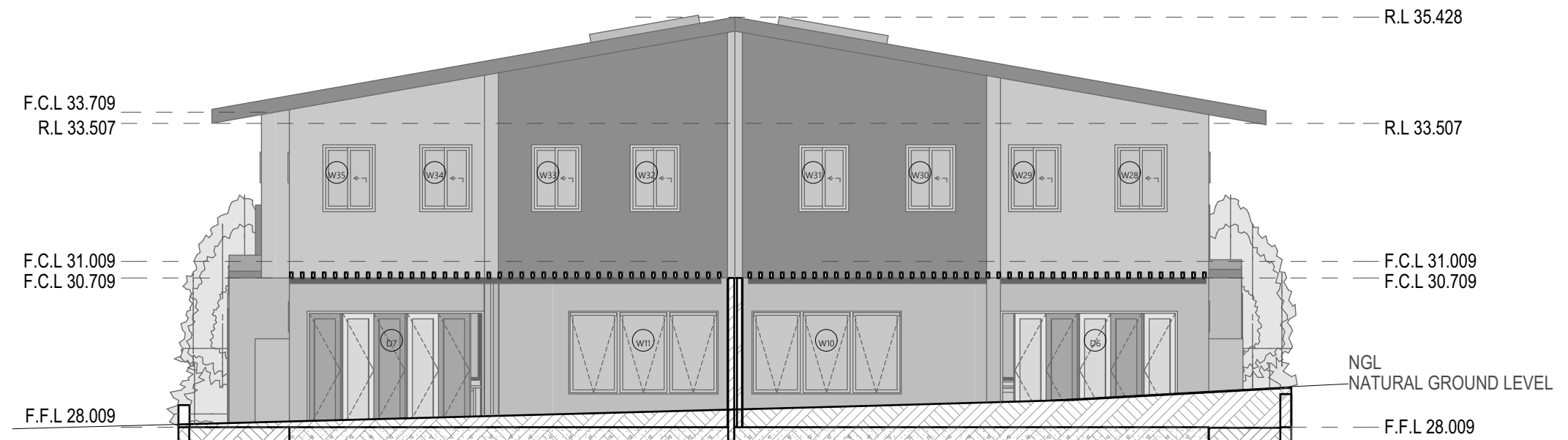


Summary of Thermal component of BASIX assessment for '41 Lynesta Avenue, Bexley North, NSW'	
For full detail of BASIX commitments refer to BASIX certificate	
The following Specifications are the basis of the thermal performance values achieved and subsequently indicated on the Assessor certificate. If they vary from drawings or other specifications these Specification shall take precedence. If only one specification is detailed for a building element, that specification must apply to all instances of that element for the whole project. If alternate specifications are detailed, the location and extent of the alternate specifications are detailed in the table below and / or clearly indicated on referenced documentation.	
Once the development is approved by the consent authority, these specifications will become a condition of consent and must be included in the built works.	
Building fabric	The external walls are Double Brick on ground floor with R2.0 insulation and Hebel wall on first floor with R2.5 insulation. Internal walls are stud type and are without insulation.
Floor construction	Ground floor slab is concrete slab on ground 'CSOG' & first floor slab is timber framed type.
Floor coverings	Floating Timber on living and bedroom areas of Ground floor, tiles in kitchen, laundry and powder room. Carpet on bedrooms, WIR and hallway areas of first floor and tiles on ensuites and bathrooms. No floor covering in garage
Windows	Window types and dimensions are as shown on the window schedule, Sliding windows are G. James make "GJA-013-25 A Type 131 Aluminium sliding Window SG 6EA" with U value of 4.44 and SHGC of 0.63, Fixed windows are G. James make "GJA-012-21 A Type 131 Series Fixed Window SG 6EA" or equivalent with U value of 4.23 and SHGC of 0.65 Sliding doors are G. James make "GJA-070-25 A Type 245" or equivalent with U value of 4.41 and SHGC of 0.6, Bi-fold doors are G. James make"GJA-090-21 A Type 477 Aluminium Bi-Fold Door SG 6EA" or equivalent with U value of 4.47 and SHGC of 0.55, Obscured type awning windows are G. James make "GJA-001-27 A Type 048 Series Awning Window SG 6EcAAB" or equivalent with U value of 4.89 and SHGC of 0.29
Skylight	Double opal type, shaft is insulated with the same level of insulation as the ceiling. The shaft reflectance is 0.75 and the openability is is 10%
Roof	All exposed roofs are to be metal sheet type and R1.0 Insulation under the roof, reflective sarking facing downwards, air space and R3.0 insulation on ceiling . Exposed roof on ground floor is with R1.0 insulation on the underside of the roof and reflective sarking facing downwards.
Color	Roof and external walls are medium color. Internal walls are Medium colored.
Ceiling insulation loss	All lights are surface mounted LED type. Hence no loss of ceiling insulation is allowed in the design and thermal calculations. The loss of insulation is due to the exhaust fans only and it is to be less than 180mmX180mm The exhaust fans are modeled for all toilets, ensuites, kitchen and laundry.
Lighting types	Surface mounted LED type.
Ventilation fans:	Kitchen, laundry, bathrooms and ensuites are all with exhaust fans. For full details please refer to BASIX report.
Notes:	1. The dwelling design should allow for insulation to be installed in compliance with the National Construction Code Part 3.12.1.1.
	2. The dwelling design should allow for the requirements of the National Construction Code Part 3.12.5 for the design, location and insulation of services to be met.
	3. Windows to be sealed with weather stripped.

FOR D.A SUBMISSION



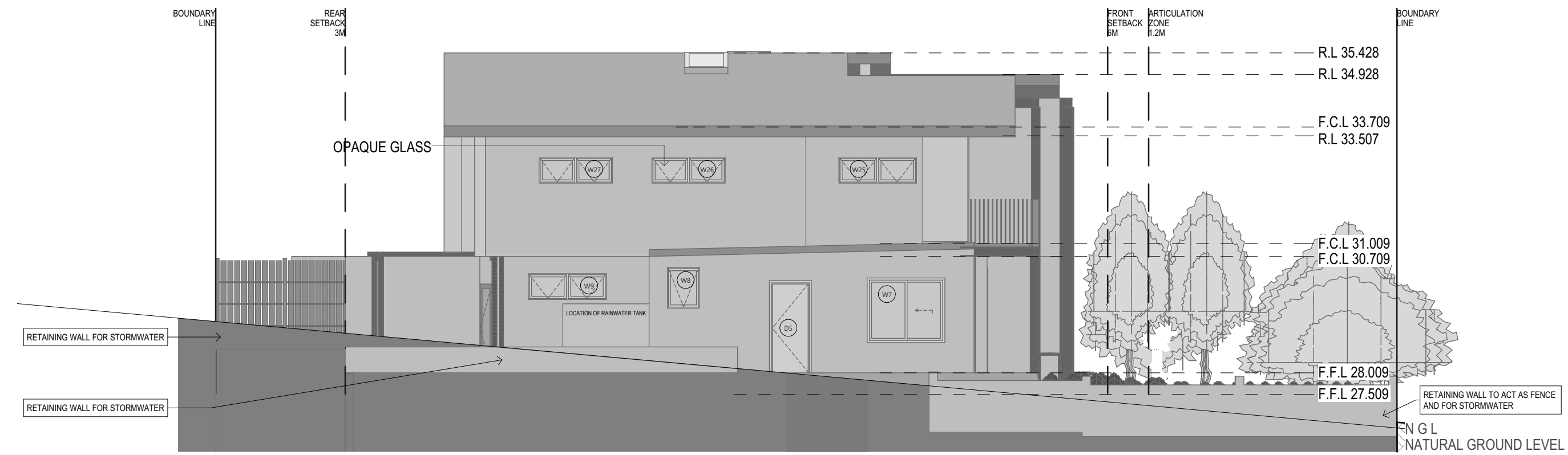
NORTH ELEVATION



SOUTH ELEVATION

WINDOW SCHEDULE

NUMBER	WIDTH X HEIGHT (mm)	ORIENTATION
W1	950 X 2437	NORTH
W2	950 X 2437	NORTH
W3	950 X 2437	NORTH
W4	950 X 2437	NORTH
W5	950 X 2437	NORTH
W6	950 X 2437	NORTH
W7	1800 X 1500	EAST
W8	750 X944	EAST
W9	1810 X 600	EAST
W10	2700 X 1500	SOUTH
W11	2700 X 1500	SOUTH
W12	1810 X 600	WEST
W13	750 X 944	WEST
W14	1800 X 1500	WEST
W15	730 X 2555	NORTH
W16	1450 X 2555	NORTH
W17	730 X 2555	NORTH
W18	450 X 2155	NORTH
W19	1995 X 600	NORTH
W20	1995 X 600	NORTH
W21	450 X2155	NORTH
W22	730 X 2555	NORTH
W23	1450 X 2555	NORTH
W24	730 X 2555	NORTH
W25	1800 X 600	EAST
W26	1700 X 600	EAST
W27	1700 X 600	EAST
W28	944 X 1210	SOUTH
W29	944 X 1210	SOUTH
W30	900 X 1210	SOUTH
W31	900 X 1210	SOUTH
W32	900 X 1210	SOUTH
W33	900 X 1210	SOUTH
W34	944 X 1210	SOUTH
W35	944 X 1210	SOUTH
W36	1800 X 600	WEST
W37	1700 X 600	WEST
W38	1800 X 600	WEST
D1	900 X 2400	NORTH
D2	2500 X 2600	NORTH
D3	2500 X 2600	NORTH
D4	900 X 2400	NORTH
D5	900 X 2100	EAST
D6	3200 X 2100	SOUTH
D7	3200 X 2100	SOUTH
D8	900 X 2100	WEST
D9	1500 X 2100	EAST
D10	1500 X 2100	WEST
S1	1000 X 2000	-
S2	1000 X 2000	-

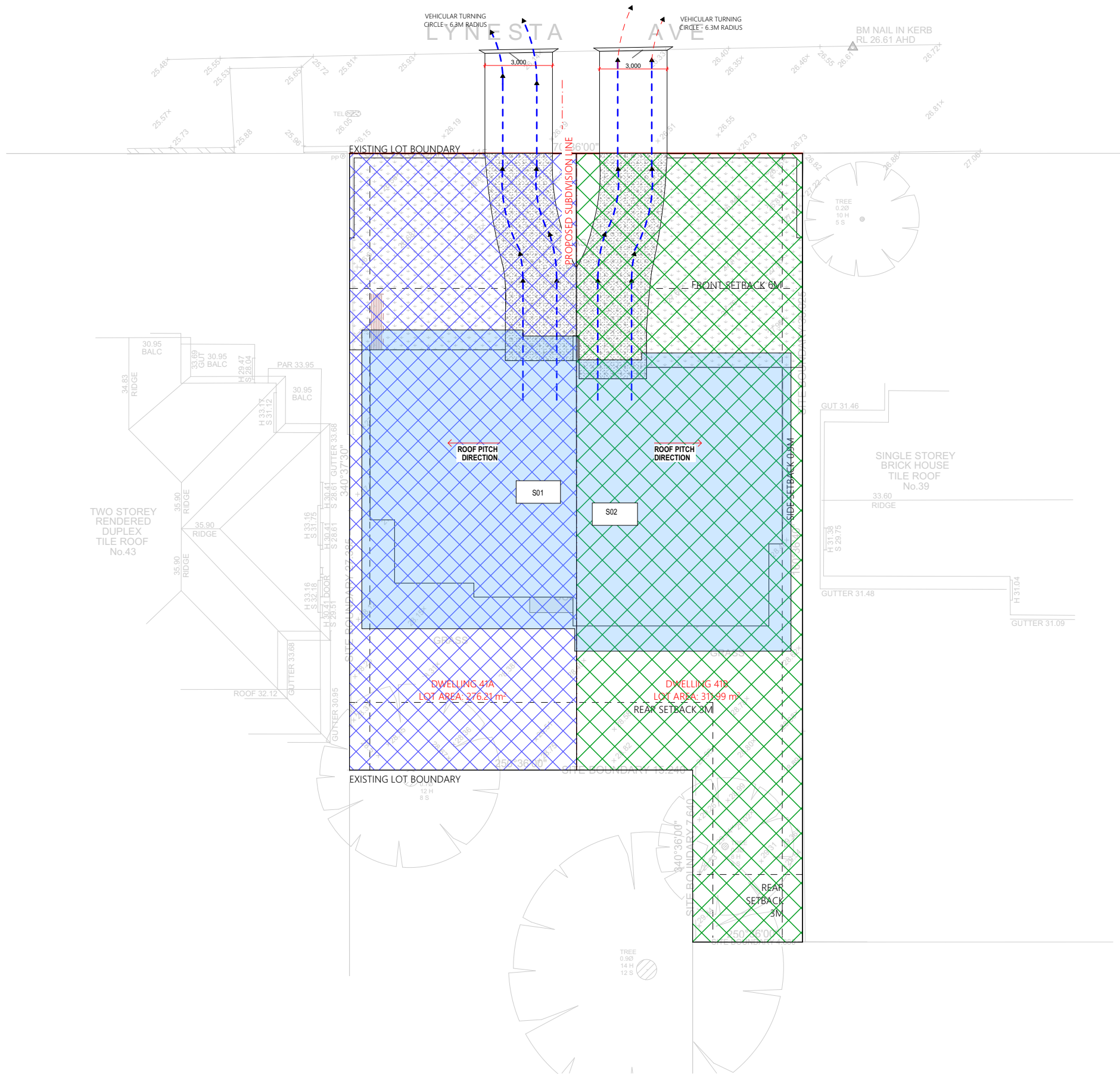


EAST ELEVATION



WEST ELEVATION

FOR D.A SUBMISSION



SITE AREA:	
DWELLING 41A	276.21m²
DWELLING 41B	311.99m²
TOTAL	588.20m²
LEGEND:	
	EXISTING LOT BOUNDARY
	SUBDIVISION LINE
	PROPOSED DWELLING
	PROPOSED LOT BOUNDARY (DWELLING A)
	PROPOSED LOT BOUNDARY (DWELLING B)

FOR D.A SUBMISSION

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Contractors must verify all dimensions on site prior to the commencement of any work or the preparation of any drawings.

Figured dimensions to be used in preference to scaled dimensions.

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ISSUE	AMENDMENTS	DATE
A - E	PRELIMINARY	7/09/2017
F - H	PANEL MEETING AMENDMENTS	15/03/2018
I	RE - SUBMISSION	20/03/2018

PROJECT

DUAL OCCUPANCY

41
LYNESTA AVENUE
BEXLEY NORTH

THANH QUACH

TITLE	
TORRENS TITLE PLAN	
SCALE	1:200
A3	DRAWING NO.
DRAWN	CHECKED
C.L.	D.M.
DATE	20/03/2018
CD-19	



41 LYNESTA AVENUE BEXLEY NORTH

PROPOSED DEMOLITION OF EXISTING DWELLING,
CONSTRUCTION OF TWO STOREY ATTACHED DUAL OCCUPANCY
AND TORRENS TITLE SUBDIVISION

**CLAUSE 4.6 EXCEPTION TO DEVELOPMENT
STANDARD STATEMENT**

EG

MARCH 2018



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CLAUSE 4.6 STATEMENT 41 LYNESTA AVENUE BEXLEY NORTH

20 March 2018

Author/s:

EG Property Group Pty Ltd

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BTP (Hons), M Pro Dev, MPIA

Prepared on behalf of: Mr Thanh Quach

Prepared for:

Bayside Council

Project:

Development Application for the demolition of existing dwelling, construction of two storey attached dual occupancy and Torrens Title subdivision.

Report Stage	Date	Author	Reviewed
Version 1	05/09/2017	DB	SG
Final	19/09/2017	DB	CH
Updated	15/12/2017	DB	DB
Updated Dual Occupancy	20/3/2018	DB	DB

1. Introduction

This Clause 4.6 Exception to a Development Standard is submitted to Bayside Council in support of a Development Application for the proposed demolition of the existing dwelling, construction of a two-storey attached dual occupancy and subsequent Torrens Title subdivision at 41 Lynesta Avenue Bexley North.

The Standard Instrument Local Environmental Plan contains its own variation clause (Clause 4.6) to allow an appropriate degree of flexibility to particular development and to achieve improved outcomes for and from development by allowing development standards to be varied. Given that *Rockdale Local Environmental Plan 2011 (RLEP 2011)* was prepared under the Standard Instrument, an objection to vary is made under Clause 4.6 of *RLEP 2011*. *RLEP 2011* was gazetted on 5 December 2011.

This Statement has been prepared in accordance with “Varying Development Standards- A Guide” prepared by the then Department of Planning and Infrastructure (now Department of Planning and Environment), dated August 2011, and has incorporated as relevant Land and Environment Court judgements which have established a series of questions to be addressed in variations lodged under Clause 4.6. The following judgements are relevant:

1. Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46
2. Wehbe v Pitwater Council [2007] NSWLEC 827
3. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (“Four2Five No.1”)
4. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 (“Four2Five No.2”)
5. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 248 (“Four2FiveNo.3”)
6. Micaul Holdings Pty Limited v Randwick Council (2015) NSWLEC 1386
7. Randwick City Council v Micaul Holdings Pty Ltd (2016) NSW LEC 7

This Statement should be read in conjunction with the submitted Statement of Environmental Effects prepared by EG Property Group dated September 2017.

2. Development Standard to be Varied

2.1 Clause 4.2A of Rockdale Local Environmental Plan 2011

The Environmental Planning Instrument to which this objection relates is *RLEP 2011*.

The development standard to be varied is the Minimum Lot Size contained in Clause 4.1(3B) of *RLEP 2011*, as dual occupancy (attached) are proposed. The Clause is as follows:

The objectives of this clause are as follows:

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

(a) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,

(b) to minimise any likely impact of subdivision, and development on subdivided land, on the amenity of neighbouring properties,

(c) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.

(2) This clause applies to a subdivision of any land shown on the [Lot Size Map](#) that requires development consent and that is carried out after the commencement of this Plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the [Lot Size Map](#) in relation to that land.

(3A) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size for the purposes of subclause (3).

(3B) Despite subclause (3), development consent may be granted to the subdivision of a lot on which there is an existing dual occupancy, or on which a dual occupancy is proposed, if:

(a) the area of each lot resulting from the subdivision is equal to or greater than 350 square metres, and

(b) each of the lots will have one of the dwellings on it.

(4) This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.

(4A) This clause does not apply to the subdivision of land in Zone R2 Low Density Residential on which the erection of an attached dwelling or a semi-detached dwelling is proposed.

(Emphasis added)

The subject site is located within the R2-Low Density Residential Zone and given that dual occupancy is proposed, Clause 4.1(3B) of *RLEP 2011* requires that the area of the lot be at least 350 square metres.

The subject site has an area of 588.2 m² and after subdivision, will result in two allotments:

- Lot 41a- 276.21 m²
- Lot 41b- 311.99 m²

The extent of the variances as percentages respectively are:

- Lot 41a- 21.4 % (given the unique lot configuration)

Lot 41b- 10.7 %

The R2- Low Density Residential Zone permits the following range of residential uses which includes Attached Dwellings, Dual Occupancies, Dwelling Houses, Semi-detached Dwellings and Seniors Housing.

The subject site is located within an established residential area. The predominant built-form in Lynesta Avenue and in the vicinity of the site is characterised by single and double-storey houses including several dual occupancies, consistent with the type of residential development permissible within the R2- Low Density Residential Zone.

The majority of dwellings are located on allotments varying in size from 373 m² to 420 m² with dual occupancy development situated on 272 m² and 378 m² sized allotments. There are 46 properties in Lynesta Avenue, of which 15 properties are two-storey (33%). The proposed development is therefore consistent with the existing built form of Lynesta Avenue. It fully complies with all development controls applicable to the site, apart from the Minimum Lot Size control including Floor Space Ratio, Height, Building Setbacks, Open Space and Landscape Requirements.

A development that strictly complied with the Minimum Lot Size would not otherwise be discernible in the streetscape. The non-compliance is an abstract notion as the lack of depth across the entire rear/southern boundary can not be appreciated from the street, and would not be noticed other than on paper. The development is otherwise fully compliant with other controls which is a tangible measure of consistency of built form within the R2- Low Density Residential Zone streetscape.



2.2 Development Standards

“Development Standards” has the following definition under Section 4(1) of the *Environmental Planning and Assessment Act, 1979 (EP&A Act, 1979)*:

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

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

- (d) *the cubic content or floor space of a building,*
- (e) *the intensity or density of the use of any land, building or work,*
- (f) *the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) *the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) *the volume, nature and type of traffic generated by the development,*
- (i) *road patterns,*
- (j) *drainage,*
- (k) *the carrying out of earthworks,*
- (l) *the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) *the provision of services, facilities and amenities demanded by development,*
- (n) *the emission of pollution and means for its prevention or control or mitigation, and*
- (o) *such other matters as may be prescribed”.*

As this Clause 4.6 objection relates to a departure from the below numerical standard:

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

it is considered that Clause 4.1(3B) of *RLEP 2011* is a development standard and not a ‘prohibition’ in respect to development, thereby requiring a variation pursuant to Clause 4.6 of the *RLEP 2011* to enable the granting of consent to the development application.

2.3 Clause 4.6 Framework

The objective of Clause 4.6 is to allow flexibility in the application of numeric development standards. The relevant objectives of Clause 4.6(1) of *RLEP 2011* are:

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

Clause 4.6(2) states that:

- (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.

(Onus on Applicant)

Clause 4.6(3) states that:

(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.

(Satisfaction of Consent Authority)

Clause 4.6(4) states that:

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

(a) the Consent Authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

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

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

It is up to the discretion of the Consent Authority, in this case Bayside Council, to be satisfied with this written request made pursuant to Clause 4.6(ii) and to form a view with respect to the Public Interest, consistent with the objectives of the standard and the



objectives of the zone. The Consent Authority typically has assumed concurrence of the Secretary.

It is intended that this written request will satisfy Bayside Council in formulating its views pursuant to Clause 4.6(4)(a)(i) and (ii).

3. Justification for Contravention of Development Standard

3.1 Clause 4.6(3)(a): Compliance with the Development Standard is unreasonable and unnecessary in the circumstances of the case

The NSW Land and Environment Court established a series of questions to be addressed in variations to development standards through the judgement of Justice Lloyd in *Winten Property Group v North Sydney Council* [2001] NSW LEC 46 which was later rephrased by Chief Justice Preston in *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*). In *Wehbe*, CJ Preston expressed the view that there are five different ways (“5 Part Test”) in which an objection to a development standard might be shown as unreasonable *or* unnecessary and is therefore well founded.

Additional principles were established in the decision by Commissioner Pearson in *Four2Five Pty Limited v Ashfield Council* 2015 NSW LEC 248 (*Four2Five Pty Limited No.3*), which was upheld by Justice Pain on appeal as well as in a decision of the Chief Judge of the NSW Land and Environment Court in an appeal against a decision of Commissioner Morris in *Micaul Holdings Pty Limited v Randwick Council* [NSW LEC 7] (*Micaul*).

In the *Four2Five Pty Ltd* case, Commissioner Pearson found that due to the consistency in language used in both *State Environmental Planning Policy (SEPP 1)- Development Standards* and Clause 4.6, that when determining whether compliance with a development standard is unreasonable or unnecessary under Clause 4.6 that the consideration provided in the *Wehbe* case (which applied to *SEPP 1- Development Standards*) may be of assistance. Note that a key principle that resulted from the *Four2Five Pty Ltd* case was whether there are sufficient environmental planning grounds to the circumstances of the proposed development to the site, and that it is necessary to demonstrate that there is something more than achieving the objective of the standard.

The 5 Part Test established in the *Wehbe* case is as follows:

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

5. *The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of that particular land. That is, that particular parcel of land should not have been included in the zone.*

More recently in the Micaul Holdings case (which is a decision of the Chief Judge of the Land and Environment Court) in an appeal against a decision of Commissioner Morris) discerned that Clause 4.6 imposed four (4) tests:

1. *That compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case;*
2. *There are sufficient environmental planning grounds to justify contravening the development standard;*
3. *That the applicant's written request has adequately addressed the matters required to be demonstrated by sub-clause (3) and;*
4. *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 with the zone in which the development is proposed to be carried out. In addition, satisfaction of those matters that must be granted by the Secretary in determining whether concurrence should be granted is required.*

While the Miccaul judgment did not directly overturn the **Four2Five Pty Limited** case an important issue emerged. The Chief Judge noted that one of the Consent Authority's obligations is to be satisfied that *"the applicant's written request has adequately addressed...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard."* He held that this means:

"The Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

(emphasis added)

The effect of the Miccaul judgement lessens the force of the Court's earlier judgement in Four2Five and demonstrates discretion at work.

Consistent with the decision in Four2Five, in *Moskovich v Waverley Council* [2016] NSWLEC 1015, the Commissioner agreed that the Public Interest Test (in Clause 4.6(4)(a)(ii)) is different to the "unreasonable or unnecessary in the circumstances of the case" test (in Clause 4.6(3)(a)). The Court said that *"the latter, being more onerous,*

would require additional considerations such as the matters outlined by Preston CJ in *Wehbe* at [70-76]”.

In light of the tests established in relevant case law, the following section of the report (Section 3.2) addresses the matters in Clause 4.6(3)(a) and in particular how the objectives of the development standard are achieved notwithstanding the non-compliance with the numerical control, consistent with the first test as outlined in the *Wehbe* case.

3.2 The objectives of the Development Standard are achieved notwithstanding non-compliance with the standard

The following provides a response to the assumed objectives of Clause 4.1(1) within *RLEP 2011*.

- (1) *The objectives of this clause are as follows:*
 - (a) *to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,*
 - (b) *to minimise any likely impact of subdivision, and development on subdivided land, on the amenity of neighbouring properties,*
 - (c) *to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*
- (2) *This clause applies to a subdivision of any land shown on the [Lot Size Map](#) that requires development consent and that is carried out after the commencement of this Plan.*
- (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the [Lot Size Map](#) in relation to that land.*
- (3A) *If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size for the purposes of subclause (3).*
- (3B) *Despite subclause (3), development consent may be granted to the subdivision of a lot on which there is an existing dual occupancy, or on which a dual occupancy is proposed, if:*
 - (a) *the area of each lot resulting from the subdivision is equal to or greater than 350 square metres, and*
 - (b) *each of the lots will have one of the dwellings on it.*
- (4) *This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.*
- (4A) *This clause does not apply to the subdivision of land in Zone R2 Low Density Residential on which the erection of an attached dwelling or a semi-detached dwelling is proposed.*

The proposed development is for a two-storey dual occupancy development which is a permissible use within the R2 Low-Density Residential zone. This is a type of development that is contemplated by the zoning and the objective of Clause 4.1(1) except that the resulting lots will be less than 350 square metres. Nonetheless, the proposed development is consistent with the zoning objective of providing for the housing needs

of the community within a low-density residential environment. The proposed development is entirely appropriate and consistent with the objective. The proposal also encourages diversity in lot sizes and built form, and provides increased opportunity for housing affordability.

The allotment is a suitable size and shape to support the dual occupancy development and fully complies with all other development controls such as landscape area, floor space ratio and setbacks. The proposed development would not be inconsistent with the typical subdivision character of Lynesta Avenue, which is evidenced by dual occupancy development as well as the irregular lot widths of properties on the southern side of Lynesta Avenue.

It would be unreasonable and unnecessary to require strict compliance with the development standard as the site is not unduly constrained by its size or shape to accommodate the proposed development which is permissible and meets the objectives of Clause 4.1.

The built form is provided as part of the Development Application as it allows for an assessment to be made of whether the proposed development is consistent with a Low Density Residential Zone despite the non-compliance. In this case it is clear that the key planning controls applicable to the proposed use and the zone (building height, setbacks, minimum open space and landscape requirements) are all fully complied with.

Low density is also a matter of perception viewed from the street and the architectural plans accord with the visual characteristics of “low density” as analysed at Section 2.1.

3.3 Clause 4.6(3)(b): Environmental Planning Grounds to justify contravening the Development Standard

There are several environmental planning grounds to justify a flexible approach to the application of the Minimum Lot Size development standard contained in Clause 4.1 of *RLEP 2011*, as follows:

- The existing area supports a varied outcome of allotments and built form and the proposed development is consistent with an established precedent in the immediate vicinity of the site, as well as in the surrounding Bexley North locality. There are two dual occupancy developments already approved and built in Lynesta Avenue:
 - Development at 43 and 43A Lynesta Avenue- dual occupancy on 278 m² allotments.
 - Development at 19 and 19A Lynesta Avenue- dual occupancy on 273 m² allotments.

A streetscape analysis coupled with an investigation of existing dual occupancy in the area, has revealed that there are ten such developments located in a 550 m radius of the subject site. These occurrences are significant in the landscape by quantum and readily recognised as part of the streetscape. The examples are

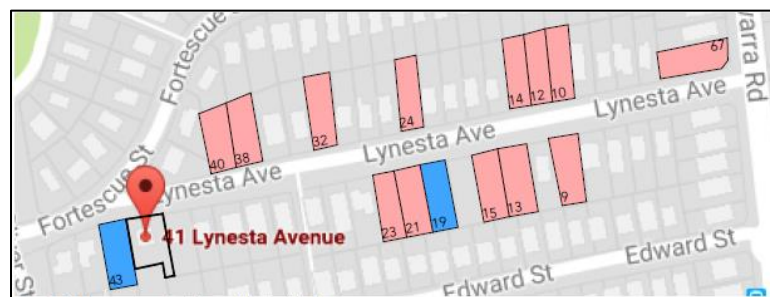
shown in an Analysis prepared by Mai Designs and submitted as part of this development application, refer to **Figure 10** below.



Source: Mai Designs

Figure 10- Semi-detached development located within 550m radius of the site.

- The proposed development is compatible with the existing and evolving streetscape character of the area, one which contains two-storey dwellings noting that 15 properties out of 46 properties (33%) in Lynesta Avenue are two storey. Refer to **Figure 11** below.



Source: Mai Designs



Figure 11- Semi-detached development located within 550m radius of the site.

- The subject site has a land parcel shape which is an anomaly when considered in the context of the surrounding subdivision pattern, as well as in the broader Bexley North locality. The surrounding subdivision pattern comprises rectangular shaped allotments of consistent depth with varied widths. The subject site is irregular in shape in that the south-east portion of the site has historically been truncated and forms part of the allotment directly to the south at 47 Edward Street. If the truncated portion of land was applied to the site area (refer to **Figure 12** and **Figure 13**), the resultant allotment would be 705 m² thereby meeting the numeric requirement of 350 m² for each semi-detached dwelling.
- Subdivision patterns and density evolve over time. An analysis of 57 allotments in the area bound by Lynesta Avenue, Edward Street, Oliver Street and New Illawarra Road, shows that the prevalent lot size is between 373 m² and 420 m², with examples of smaller lot sizes of 273 m² which occupy dual occupancy development. In the general vicinity there are examples of dual occupancy development on smaller allotments than the subject allotment. The proposed development is situated on proposed allotments of 313 m² and 276 m² which are larger or consistent in size with the property to its immediate west at 43 Lynesta Avenue which supports dual occupancy development on 278 m² allotments as well as the property at 19 and 19A Lynesta Avenue on 273 m² allotments.

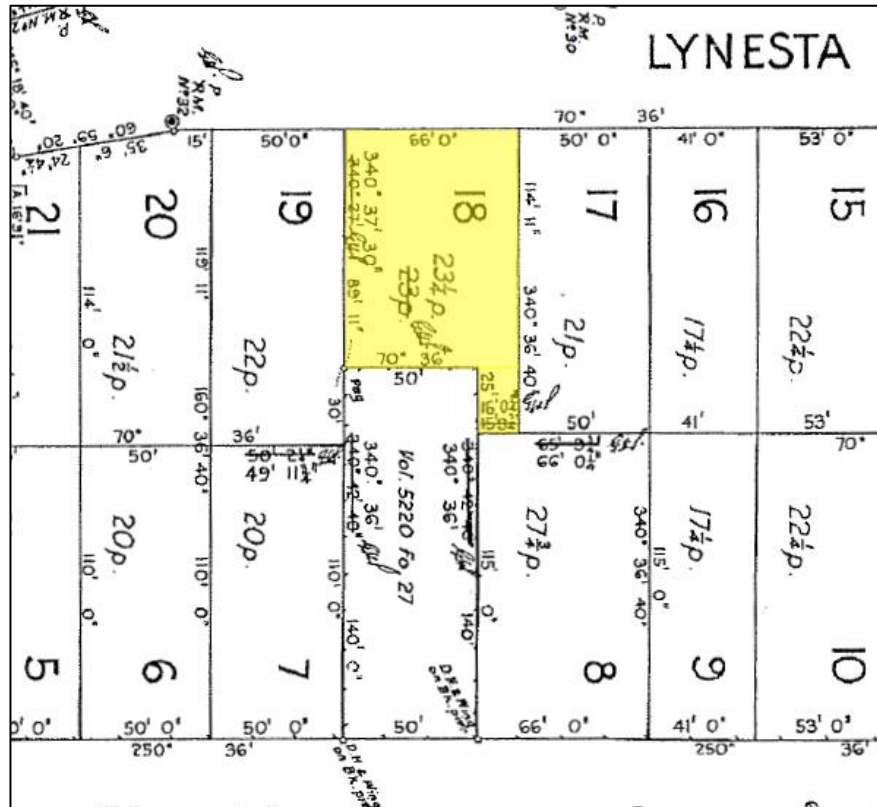


Figure 12: Plan of Subdivision extract

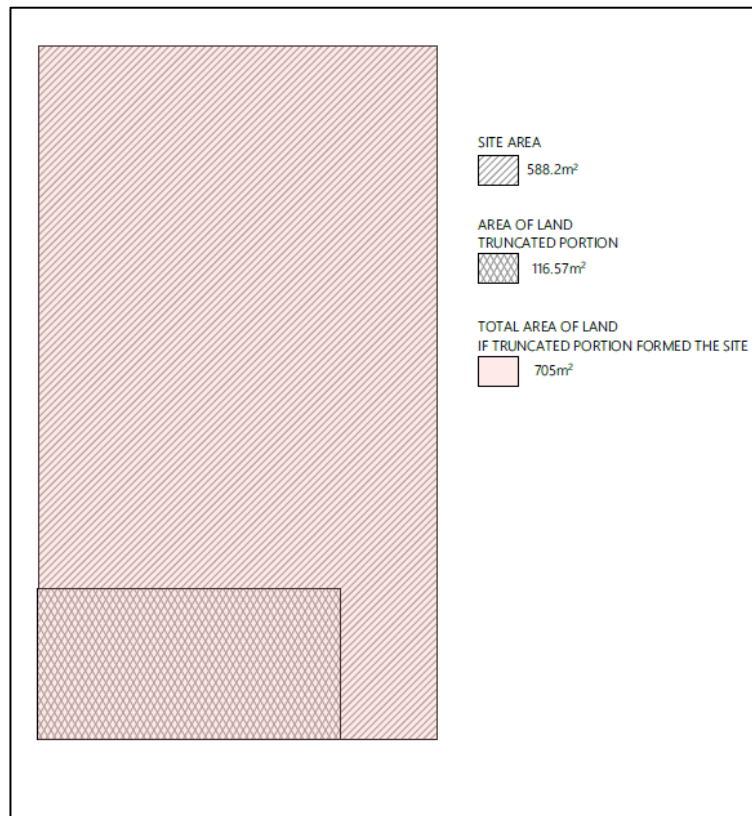


Figure 13: Land Parcel area with truncated part Source: Mai Designs

- The subject site has a frontage of 20.12 m, which is significantly wider than other properties in Lynesta Avenue which have an average frontage of between 12.5 m to 14.6 m. It can readily accommodate the dual occupancy development. Arguably the site accommodates semi-detached dwellings development better than on narrower allotments on Lynesta Avenue (as in the case of 19/19A and 43/43A Lynesta Avenue which have frontages of approximately 15 m). The wider frontage of the subject site ensures an appropriate streetscape outcome particularly as the design of the dwellings and landscaping is of high quality in terms of design and presentation.

It is noted that the majority of properties on the northern side of Lynesta Avenue (numbered from 2 to 30) have a consistent width of 12.19 m, while the southern side of Lynesta Avenue provides a greater variety of allotment widths. Refer to **Table 1** and **Table 2** below.

Table 1- Width of properties on the northern side of Lynesta Avenue

Width of properties on the northern side			
2	12.19 m	22	12.19 m
4	12.19 m	24	12.19 m
6	12.19 m	26	12.19 m
8	12.19 m	28	12.19 m
10	12.19 m	30	12.19 m
12	12.19 m	32	13.54 m
14	12.19 m	34	13.53 m
16	12.19 m	36	15.57 m
18	12.19 m	38	14.35 m
20	12.19 m	40	15.27 m

Table 2- Width of properties on the southern side of Lynesta Avenue

Width of properties on the southern side			
5	12.8 m	27	13.82 m
7	14.02 m	29	13.11 m
9	16.46 m	31	12.8 m
11	13.11 m	33	16.15 m
13	15.85 m	35	16.15 m
15	15.28 m	37	12.5 m
17	14.63 m	39	15.24 m
19	14.63 m	41	20.12 m
21	14.63 m	43	15.24 m
23	12.8 m	45	15.39 m
25	15.34 m	47	12.52 m

- Where a built form is determined to be an appropriate outcome for the site, subdivision is a secondary consideration. The proposed development complies with the height, bulk, minimum frontage, setbacks, landscape and open space controls contained in *RDCP 2011*. 46% of the subject site is built upon.

- The allotment is a suitable size and shape to support the dual occupancy development and the landscape area provided meets Council's minimum requirements of 25% (provides 265). The landscape treatment provides a number of street trees and will result in a high-quality streetscape. Refer to the analysis prepared by Mai Designs and submitted as part of this development application.
- A development that strictly complied with the minimum lot size would not be discernible in the streetscape. The lack of depth across the entire rear/southern boundary could not be appreciated from the street. Likewise the numeric non-compliance would not be comprehended other than on paper. The non-compliance is therefore an abstract notion, and in this instance compliance is unnecessary and unreasonable particularly as a highly-compliant physical development will be achieved at the Site which is a more tangible measure of acceptability within the streetscape.
- The proposed development remains consistent with the objectives of the R2-Low Density Residential zone despite the numerical non-compliance with the minimum lot size.
- A compliant proposal, one that would have 350 m² allotments would produce a poorer streetscape outcome than the proposed development application as the resultant building would be larger and bulkier (complying with Council's planning controls) and would have a more dominant visual impact in the street.
- The proposed development will not result in significant adverse impacts upon the locality or adjacent residential properties by way of overshadowing, view loss, privacy, bulk and scale regardless of whether the land subdivided or not. In this regard strict adherence to the minimum lot size serves no planning purpose, where it is in this case, a direct function of an acceptable built form.
- The proposed development does not result in the loss of public or private views.

There would be no purpose served if a variation cannot be accommodated under these circumstances. The site is clearly capable of supporting the intended development being fully compliant with all other relevant development standards and controls.

3.4 Clause 4.6(4)(a)(ii): In the Public Interest because it is consistent with the Objectives of the Zone and Development Standard

3.41 Compliance with the Objectives of the Development Standard

The proposed development is consistent with the objectives of the Minimum Lot Size standard, for the reasons set out in Section 3.2 of the report. As noted in Section 3.2 of this Report, the proposed development is for a dual occupancy development which is a permissible use within the R2- Low Density Residential Zone. The proposed development is consistent with the objectives of the development standard as it provides for the housing needs of the community within a low density residential environment.

3.42 Consistency with the Objectives of the Zone

Objectives of the zone

- *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 ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.*

The proposed development will satisfy the zone objectives for the following reasons:

- The proposed development is envisaged within the zone as demonstrated through its permissibility. The development will provide for the housing needs of the community and is therefore consistent with the objective.
- The second objective is not relevant as it relates to non-residential development uses that are permissible within the zone.
- The proposed development minimizes impact on the character and amenity of the area as it is fully compliant with the height, floor space ratio and setback controls, consistent with relevant development controls and desired character. The building design will result in a high quality development that is consistent with the emerging character of Lynesta Avenue. The proposed development will not result in unreasonable amenity impacts.
- The proposed development represents an efficient and appropriate use of land that is compliant with the environmental capacity of the site and its R2- Low Density Residential zoning.

4. Other Matters for Consideration

Pursuant to Clause 4.6 (5) of *RLEP 2011*, in deciding whether to grant concurrence, the Secretary must consider the following matters:

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

These matters are dressed in detail below.

4.1. Clause 4.6 (5)(a): Whether contravention of the Development Standard raises any matter of significance for State or Regional Environmental Planning

The numeric non-compliance with Clause 4.2(A) of *RLEP 2011* does not raise any matter of significance for State and Regional Planning, nor does it conflict with any State Planning Policies or Ministerial Directions.

4.2. Clause 4.6 (5)(b): The Public Benefit of maintaining the Development Standard

The public benefit is best served by the proposed development complying with the objectives of the Minimum Lot Size control rather than strictly complying with the numeric standard of the control.

The public benefits of the proposed departure from the Minimum Lot Size control can be summarised as follows:

- The social and economic welfare of the community would not be promoted as it would prevent the construction of new high-quality housing;
- The co-ordination of the orderly and economic use and development of land would be discouraged as it would hinder the development of a well-designed modern semi-detached dwellings on a suitable sized allotment, with access to existing services, transport and infrastructure.
- The proposed development would result in public benefit through positive urban design outcomes, the provision of additional housing stock with good residential amenity within walking distance to good public transport.

4.3. Clause 4.6(5)(c): Any other matters required to be taken into consideration by the Secretary before granting concurrence

There are no other matters that require consideration by the Secretary.

The Five Part Test of the Land and Environment Court Matters for Consideration states that the Consent Authority must be of the opinion that granting consent to the development application would be consistent with the Policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the *EP&A Act, 1979*.

- (a) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment, and*
- (b) the promotion and co-ordination of the orderly and economic use and development of land.*

This is clearly the case for 41 Lynesta Avenue Bexley North.

5. Conclusion

This Clause 4.6 Exception to a Development Standard has demonstrated that it would be unreasonable for strict compliance with the Minimum Lot Size development standard contained in Clause 4.1(3B) of *RLEP 2011* to be enforced in this particular case as there are sufficient planning grounds to justify contravening the standard. The proposed development satisfies the stated and underlying objectives of the Minimum Lot Size standard and the broader zoning objectives for the locality such that:

- The proposed development for dual occupancy is permissible and is consistent with the objectives of the R2- Low-Density Residential Zone;
- The proposed development is consistent with an established precedent of dual occupancy development in the immediate vicinity of the site and is compatible with the character of the area and is consistent with the objective of the Clause 4.1 Minimum Lot Size standard without impacting upon the amenity of the area;
- The proposal is consistent with all objectives, provisions and performance criteria contained in the *RDCP 2011*;
- The subject site has a land parcel shape which is an anomaly when considered in the context of the surrounding subdivision pattern, as well as in the broader Bexley North locality. The south-east portion of the site has historically been truncated and forms part of the allotment directly to the south at 47 Edward Street. If the truncated portion of land were applied to the site area the resultant allotment would be 705 m² which would meet the numeric requirement of 350 m² for each dual occupancy. The lack of depth across the whole rear boundary would not be comprehended from the street;
- The site has a wide frontage of 20.12 m, which is significantly wider than the vast majority, if not all of the remaining properties in Lynesta Avenue which have an average frontage of 12.5 m to 14 m and can readily accommodate the development of semi-detached dwellings. The wider frontage ensures an appropriate streetscape outcome particularly as the design of the dwellings and landscaping is of high quality in terms of design and presentation.
- Strict adherence to the development standard will not result in a better planning outcome for the land as it will prevent the logical subdivision of an otherwise fully compliant and meritorious development application;
- The proposed development is of high quality development that will add visual interest to the streetscape and provides a high level of amenity for its occupants without adversely compromising the amenity of adjoining properties; and



- The proposed development on balance does not result in adverse impacts on the surrounding development.

REZONE REFURBISH REPOSITION REDEVELOP RESONATE

SYDNEY

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Sydney NSW 2000
Australia

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SYDNEY

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Sydney NSW 2000
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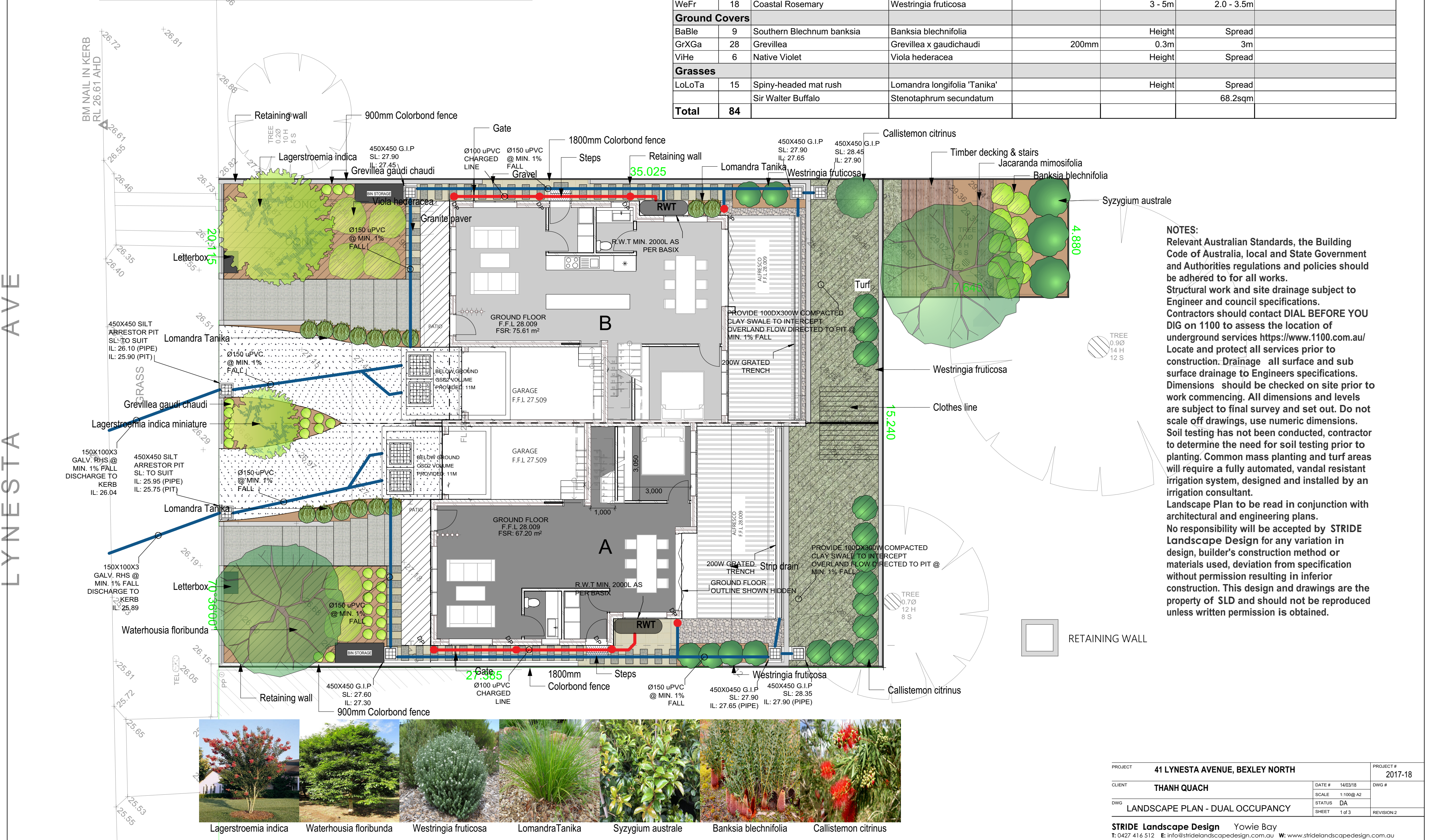
MELBOURNE

Kurrajong House
Suite 2, Level 7
175 Collins Street

EG

LANDSCAPE AREA = 85.3sqm, 27.3%	LANDSCAPE AREA = 72.5sqm, 26.3%
DEEP SOIL AREA = 55.5sqm	DEEP SOIL AREA = 61.5sqm
PROPERTY B: TOTAL LAND AREA = 312.2sqm	PROPERTY A: TOTAL LAND AREA = 276sqm

Plant List						
ID	Qty	Common Name	Botanical Name	Scheduled Size	Mature Height	Mature Spread
Trees						
JaMi	1	Jacaranda	Jacaranda mimosifolia		over 30m	10 - 15m
Lind	2	Crapemyrtle	Lagerstroemia indica		15 - 35 ft	12 - 20 ft
WaFl	1	Weeping Lilly Pilly	Waterhousia floribunda		over 30m	10 - 15m
Shrubs						
CallCi	1	Lemon-scented Bottlebrush	Callistemon citrinus	200mm	3 - 5m	2.0 - 3.5m
SyAuBu	3	Resilience Lilly Pilly	Syzygium australe 'Resilience'	300mm	3m	2m
WeFr	18	Coastal Rosemary	Westringia fruticosa		3 - 5m	2.0 - 3.5m
Ground Covers						
BaBle	9	Southern Blechnum banksia	Banksia blechnifolia		Height	Spread
GrXGa	28	Grevillea	Grevillea x gaudichaudi	200mm	0.3m	3m
ViHe	6	Native Violet	Viola hederacea		Height	Spread
Grasses						
LoLoTa	15	Spiny-headed mat rush	Lomandra longifolia 'Tanika'		Height	Spread
		Sir Walter Buffalo	Stenotaphrum secundatum			68.2sqm
Total	84					



MAINTENANCE PLAN – JUNE TO NOVEMBER

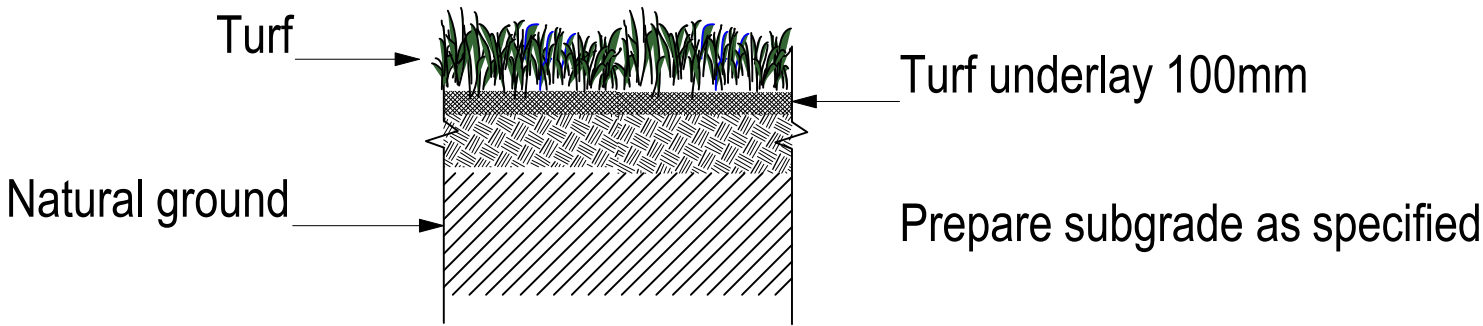
	JUNE				JULY					AUGUST				SEPTEMBER				OCTOBER				NOVEMBER			
GARDEN BEDS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Fertilising																	*			*				*	
Mulching											*									*				*	
Pest & Disease			*				*				*						*			*				*	
Pruning			*														*								
Replacement												*					*								
Watering		**	**		*		*		*		*		*	*	*	*	*	*	*	*	*	**		**	**
Weeding			*								*						*			*				*	

TURF	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Fertilising													*				*								
Mowing	*		*		*		*		*		*		*		*		*		*		*		*		*
Pest & Disease			*						*				*				*				*		*		*
Watering	**		**		*		*		*		*		*	*	*	*	*	*	*	*	*	*	**	*	**
Weeding																	*				*				*

MAINTENANCE PLAN – DECEMBER TO MAY

	DECEMBER				JANUARY				FEBRUARY				MARCH				APRIL				MAY				
GARDEN BEDS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Fertilising			*																	*					
Mulching																				*					
Pest & Disease			*			*				*						*				*					
Pruning																								*	
Replacement																				*				*	
Watering	**		**	**	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Weeding			*			*				*						*				*				*	

TURF	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Fertilising																						*			
Mowing		*		*		*		*		*		*		*		*		*		*		*		*	
Pest & Disease				*				*				*				*				*		*		*	
Watering		**		**		**		**	*	*	*	*	*	*	*	*	*	*	*	*	*	**		**	
Weeding				*				*				*				*				*				*	



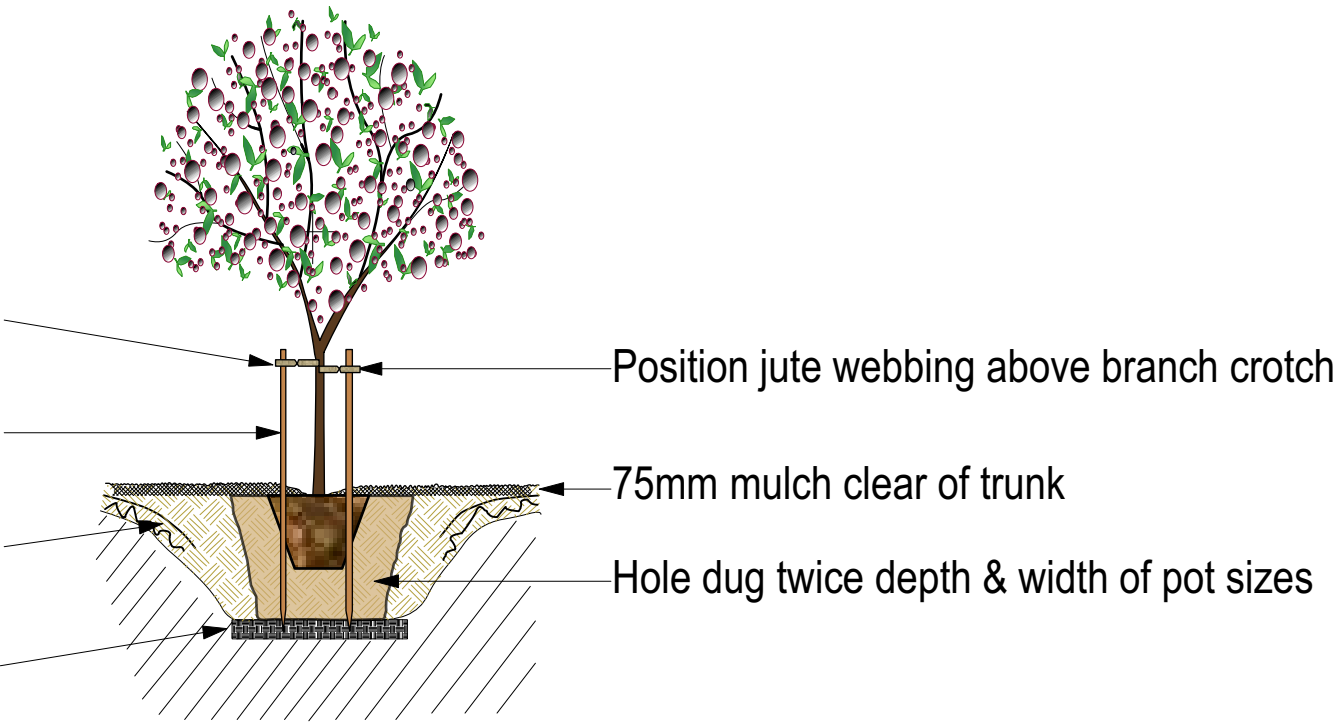
TURF LAYING DETAIL

50mm jute webbing mesh attached securely to stakes in figure 8

Hardwood stakes as specified

Backfill with mixture of natural soil & imported garden mix

Backfill & cultivate subgrade to 200mm

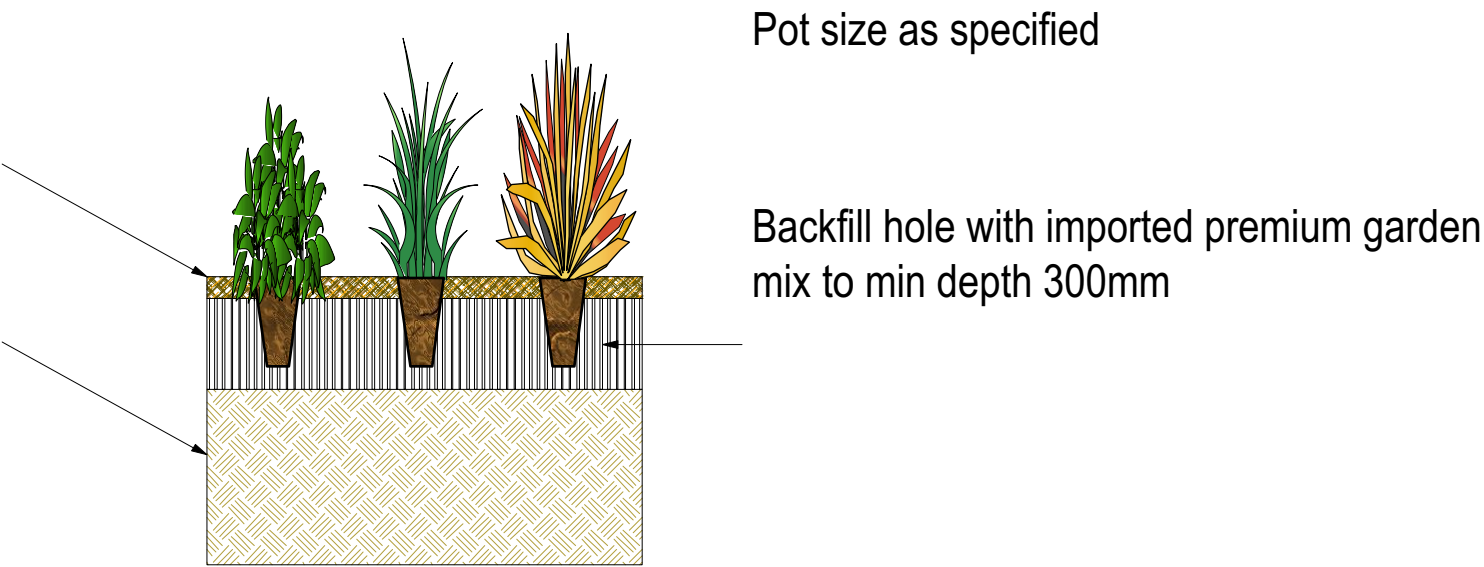


TREE PLANTING DETAIL

75mm mulch clear of base of plants

Natural ground

Prepare subgrade as specified



SHRUB AND GROUND COVER PLANTING DETAIL

PROJECT	41 LYNESTA AVENUE, BEXLEY NORTH			PROJECT #	2017-18
CLIENT	THANH QUACH		DATE #	14/03/18	DWG #
			SCALE	1:100@ A2	
DWG	MAINTENANCE & PLANTING			STATUS	DA
			SHEET	2 of 3	REVISION:2
STRIDE Landscape Design Yowie Bay T: 0427 416 512 E: info@stridelandscape.com.au W: www.stridelandscape.com.au					

LANDSCAPE GUIDELINES

GENERAL

SITE WORKS - BUILDER SHALL STABILIZE ALL EXCAVATED AREAS PRIOR TO LANDSCAPE WORKS. ALL RUBBISH, DEBRIS, FALLEN BRANCHES SHALL BE CLEARED FROM LANDSCAPE AREA AND DISPOSED OF USING SKIP BINS ONSITE OR TRANSPORTED TO LOCAL WASTE MANAGEMENT FACILTIY. SITE MANAGEMENT MEASURES ARE TO BE INSTALLED PRIOR TO LANDSCAPE SITE WORKS COMMENCING AND MUST BE RETAINED IN PLACE DURING SITE WORKS. REMOVAL OF STRUCTURES, DRIVEWAYS, PATHS, FENCES, ETC. WILL INCLUDE THE EXCAVATION AND REMOVAL OF THE BASE COARSE GRAVEL MATERIAL AND FOOTINGS. THE CONTRACTOR WILL BE HELD RESPONSIBLE FOR ANY DAMAGE TO UTILITY SERVICES, PIPES, BUILDING STRUCTURES, PAVING SURFACES, FENCING, FOOTWAYS, KERBS, ROADS AND EXISTING PLANT MATERIAL. THE SITE IS TO BE CONTINUOUSLY MAINTAINED DURING LANDSCAPE WORK. THE SITE IS TO BE LEFT IN CLEAN AND TIDY CONDITION AT THE COMPLETION OF WORKS, ALL RUBBISH IS TO BE REMOVED FROM SITE.

SITE ANALYSIS

LANDSCAPE DESIGN SHOULD CONSIDER THOROUGH SITE ANALYSIS INCLUDING PREVAILING WEATHER. SOLAR ACCESS IS TO BE MAINTAINED AND ENERGY EFFICIENCY IMPROVED WHERE FEASIBLE. LANDSCAPE WORKS SHOULD NOT RESULT IN SIGNIFICANT LOSS OF SOLAR ACCESS DURING WINTER MONTHS. THE PROVISION OF SHADE DURING SUMMER IS ALSO AN IMPORTANT CONSIDERATION FOR PRIVATE AND PUBLIC OPEN SPACE.

PRIVACY

MINIMUM LANDSCAPE SCREENING WILL BE 1.8M. LANDSCAPING SHOULD BE CONSTRUCTED AND MAINTAINED TO MAINTAIN PRIVACY, ALONG BOUNDARIES AND ADJOINING PROPERTIES IS OF PARTICULAR IMPORTANCE.

GARDEN BED PREPARATION

ONCE CLEAR OF WEEDS, GRASS AND DEBRIS RIP AND CULTIVATE SUBSOIL FOR GARDEN BEDS TO A DEPTH OF 200MM. WEEDS TO BE CONTROLLED WITH HERBICIDE. 200MM GARDEN SOIL MIX SPREAD AND GRADED EVENLY OVER SUBSOIL BASE. SOIL SHOULD BE FORMULATED TO SUIT SELECTED PLANT SPECIES AND FREE FROM MATERIALS TOXIC TO PLANT GROWTH, STONES, CLAY, WEEDS, TREE ROOTS, PESTS AND DISEASES.

PLANTING

PLANTS SHOULD BE DISEASE AND INSECT FREE AND TRUE TO SPECIES, TYPE AND VARIETY. PLANTS ARE TO BE WELL GROWN, NOT ROOT BOUND AND COMPLY WITH NATSPEC GUIDE TO PURCHASING LANDSCAPE TREES. ALL PLANTS ARE TO BE REMOVED FROM THEIR CONTAINERS PRIOR TO PLANTING WITH AS LITTLE DISTURBANCE TO THE ROOT SYSTEM AS POSSIBLE. ALL LABELS SHOULD BE REMOVED. PLANTING SHALL NOT BE CARRIED OUT IN DRY SOIL OR EXTREME WEATHER CONDITIONS.

PLANTS SHOULD BE PLANTED AT THE SAME DEPTH AS THE PLANTS WERE IN THE CONTAINERS TO ALLOW FOR A SHALLOW SAUCER OF SOIL TO BE FORMED AROUND THE PLANTS TO AID THE PENETRATION OF WATER. THE BACKFILLED SOIL SHOULD BE TAMPERED DOWN FIRMLY AND WATERED IMMEDIATELY AND THOROUGHLY. NEW PLANTS WILL BE FERTILIZED WITH A SLOW RELEASE FERTILISER TO MANUFACTURER'S RATES OF APPLICATION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE FAILURE OF PLANTS DURING CONSTRUCTION, EXCEPT FOR ACTS OF VANDALISM. COOLER MONTHS ARE THE OPTIMAL TIME FOR PLANTING TO OCCUR DUE TO SLOW PLANT GROWTH, WARM SOILS, LOW TEMPERATURES AND LOW WATER REQUIREMENTS BY PLANTS.

NEW PLANTING MINIMUM RECOMMENDED PLANT CONTAINER SIZES ARE:

100-140 MM	GROUND COVERS
300 MM	SHRUBS
25 LITRES	ACCENT PLANTING
45 - 100 LITRE	FOR SPECIMEN PLANTS AND TREES

TREE PLANTING

REQUIRED SOIL DEPTH IS 600MM COMBINED OF GENERAL PURPOSE SOIL TO BASE WITH 150MM TOP COVER OF A SOIL SUITABLE FOR THE TREE SPECIES. EXISTING SOIL LEVELS SHOULD BE MAINTAINED CLOSE TO THE ROOT ZONE OF RETAINED TREES. INDIGENOUS PLANT SPECIES ARE PREFERRED IN LANDSCAPE DESIGN. IF FERTILISER IS REQUIRED, ORGANIC FERTILISER SHOULD BE APPLIED. RETAIN AND PROTECT ALL INDIGENOUS STREET TREES DURING CONSTRUCTION WORKS. A QUALIFIED ARBORIST SHOULD BE CONSULTED IF MATURE TREES SHOW ANY SIGNS OF DISEASE, INADEQUATE GROWTH OR ATTACK BY PESTS. IT IS RECOMMENDED THAT AN APPROVED ROOT BARRIER BE INSTALLED TO MANUFACTURER'S SPECIFICATIONS TO ALL TREE PLANTING CLOSE TO STRUCTURES, WALLS AND HARD PAVEMENT AREAS.

TREE and SHRUB STAKING

HARWOOD STAKES (POINTED) SHOULD BE USED FOR TREES AND SHRUBS THAT ARE NOT SELF SUPPORTING:
TREES UP TO CONTAINER SIZE 25 LITRE: 2 X 25MM X 25MM X 1800MM HIGH STAKES
TREES ABOVE CONTAINER SIZE 25 LITRE: 2 X 50MM X 50MM X 1800MM HIGH STAKES
SHRUBS: 1 X 25MM X25MM X 1500M HIGH STAKE

TIES SHOULD BE FIRMLY ATTACHED TO THE STAKES, IN A WAY TO AVOID DAMAGE TO THE STEM WHILE ALLOWING A SMALL DEGREE OF MOVEMENT. JUTE MESH WEBBING (50MM) SHOULD BE TIED IN A FIGURE EIGHT ON EACH STAKE AND BE POSITIONED ABOVE SUITABLE BRANCH CROTCH. STAKES SHOULD BE DRIVEN FIRMLY INTO THE GROUND AS CLOSE TO THE ROOT BALL AS POSSIBLE WITHOUT DAMAGING THE ROOT BALL.

TREE MANAGEMENT

TREES TO BE RETAINED SHALL BE PROTECTED DURING SITE WORKS BY THE ERECTION OF SOLID BARRICADES TO THE SPECIFICATION OF COUNCIL. NO STORAGE OF MACHINERY OR MATERIALS BENEATH CANOPY OF TREES TO BE RETAINED. NO CHANGES TO SOIL LEVEL OR CULTIVATION OF SOIL BENEATH CANOPY OF TREES TO BE RETAINED. CUT AND FILL WITHIN TREE PROTECTION ZONE (TPZ) IS PROHIBITED. A BUSH REGENERATOR OR ARBORIST TO BE EMPLOYED TO SUPERVISE WORKS ON OR NEAR AREAS OF BUSHLAND OR WITHIN THE TPZ OF INDIVIDUAL TREES. AUSTRALIAN STANDARD AS 4970-2009 SHOULD BE ADHERED TO. NATURAL SURFACE AND GROUND WATER FLOWS TO BUSHLAND AREAS AND INDIVIDUAL TREES TO BE MAINTAINED.

TURF AREAS

ONCE CLEAR OF WEEDS, GRASS AND DEBRIS RIP AND CULTIVATE SUBSOIL FOR TO A DEPTH OF 150MM. ADD GOOD QUALITY TURF UNDERLAY TO DEPTH OF 100MM, SPREAD EVENLY OVER SUBSOIL BASE, SPREAD TURF FERTILISER ON UNDERLAY. TURF SHOULD HAVE AN EVEN GRADE WHEN LAID WITH ALL SURFACE WATER DIRECTED TOWARDS DRAINAGE PITS, KERBS OR AWAY FROM BUILDINGS TO PREVENT POOLING. THE WHOLE TURFED AREA SHALL BE THOROUGHLY SOAKED AND KEPT MOIST UNTIL COMPLETION OF LANDSCAPE WORKS. AFTER SETTLEMENT THE TURF SHOULD FINISH LEVEL WITH ADJOINING HARD SURFACES. ALL TURFED AREAS ADJACENT TO GARDEN BEDS TO BE EDGED WITH A MOWING STRIP FLUSH WITH THE TURFED AREA.

PAVING

THE USE OF SEMI-PERMEABLE PAVERS LAID ON A STABLE SUB-BASE IS ENCOURAGED, E.G. CRUSHED STONE, DRY SAND/CEMENT MIXTURE, CONCRETE. THE USE OF PERMEABLE PAVING REDUCES THE VOLUME OF STORMWATER RUNOFF. PAVED AREAS SHOULD BE DESIGNED TO DRAIN INTO LANDSCAPED AREAS OR ABSORPTION TRENCHES. LEVELS AND FALL AS PER PLAN.

DRAINAGE

ENSURE ALL GARDEN AND LAWN AREAS DRAIN SATISFACTORILY. ALL LEVELS AND SURFACE DRAINAGE SHALL BE DETERMINED BY OTHERS AND APPROVED ON SITE BY SITE MANAGER.

MULCH

MULCHING GARDEN BEDS PROTECTS PLANTS FROM HEAT, MINIMISES EVAPORATIVE WATER LOSS, SUPPRESSES WEED GROWTH AND ADDS NUTRIENTS TO SOIL AS IT DECOMPOSES. MULCH SHOULD BE APPLIED EVENLY TO A MINIMUM OF 75MM DEEP AND BE CLEAR OF PLANT STEMS. MULCH MAY BE LEAF LITTER, WOOD CHIP OR BARK CHIPS, MAXIMUM PARTICLE SIZE OF 50MM AND MUST BE FREE OF FOREIGN MATERIAL. NOXIOUS WEEDS SHOULD NOT BE USED TO CREATE MULCH. ORNAMENTAL GRAVELS CAN BE USED FOR ROOFTOP, COURTYARD AND PODIUM GARDENDS AT 50-75MM DEPTH.

STAKING

HARWOOD STAKES (POINTED) SHOULD BE USED FOR TREES AND SHRUBS THAT ARE NOT SELF SUPPORTING:
TREES UP TO CONTAINER SIZE 25 LITRE: 2 X 25MM X 25MM X 1.8M HIGH STAKES
TREES ABOVE CONTAINER SIZE 25 LITRE: 2 X 50MM X 50MM X 1.8M HIGH STAKES
SHRUBS: 1 X 25MM X25MM X 1.5M HIGH STAKE

TIES SHOULD BE FIRMLY ATTACHED TO THE STAKES, IN A WAY TO AVOID DAMAGE TO THE STEM WHILE ALLOWING A SMALL DEGREE OF MOVEMENT. JUTE MESH WEBBING (50MM) SHOULD BE TIED IN A FIGURE EIGHT ON EACH STAKE AND BE POSITIONED ABOVE SUITABLE BRANCH CROTCH. STAKES SHOULD BE DRIVEN FIRMLY INTO THE GROUND AS CLOSE TO THE ROOT BALL AS POSSIBLE WITHOUT DAMAGING THE ROOT BALL.

ROOFTOP, PODIUM, RAISED PLANTERS

PODIUM AREAS SOIL DEPTH WILL BE OF MINIMUM OF 600MM TO ENSURE PLANT ESTABLISHMENT. THE SOIL SHOULD BE FREE DRAINING MINERAL SOIL TO THE BASE WITH A 150MM TOP COVER OF A SOIL BLEND AND ORGANIC SOIL MIXTURE AND INCLUDING A WATERPROOFING MEMBRANE, MEMBRANE PROTECTION LAYER, HORIZONTAL DRAINAGE MEDIA LAYER AT SOIL SUB-BASE AND SURFACE MULCH. TURFED AREAS - MINIMUM SOIL DEPTH OF 300MM. PLANTING AREAS TO BE CONSTRUCTED OF MASONRY, BE APPROPRIATELY WATERPROOFED AND DRAINED. AUTOMATED IRRIGATION SYSTEM REQUIRED FOR GARDEN BEDS AND TURF AREAS. RAISED GARDEN BEDS TO BE 600MM DEEP. GENERAL PURPOSE SOIL TO FORM THE BASE WITH 150MM OF BLENDED SOIL AND ORGANIC MIX PLACED ON TOP OF BASE.

UNDISTURBED SITES

NATIVE (INDIGENOUS) GARDEN - RIPPING OF COMPACTED SOILS, WEEDS CONTROLLED WITH HERBICIDE PRIOR TO PLANTING AND MULCHING, ROCKY SANDSTONE SOIL IS AN EXCELLENT SUBSTRATE. ADDITION OF NATIVE GARDEN MIX AROUND THE ROOT BALL WHEN PLANTING.

DISTURBED SITES

HIGH NUTRIENT SOILS (ADDITION OF LIME, FERTILISER, ORGANIC MATTER) AND SOILS WITH PH >6 CAN BE DETRIMENTAL TO NATIVE (INDIGENOUS) PLANTS. SOILS THAT HAVE SUPPORTED THE GROWTH OF LAWNS AND EXOTIC PLANTS ARE USUALLY HIGH IN NUTRIENT SOILS. EARTH WORKS SUCH AS CUT AND FILL DISTURBS THE SOIL PROFILE. NATIVE GARDENS ADD LOW PHOSPHORUS GARDEN MIX SOIL WITH PH 5-6 TO IMPROVE THE SOIL STRUCTURE PLUS 50% RIVER SAND.

LANDSCAPE MAINTENANCE

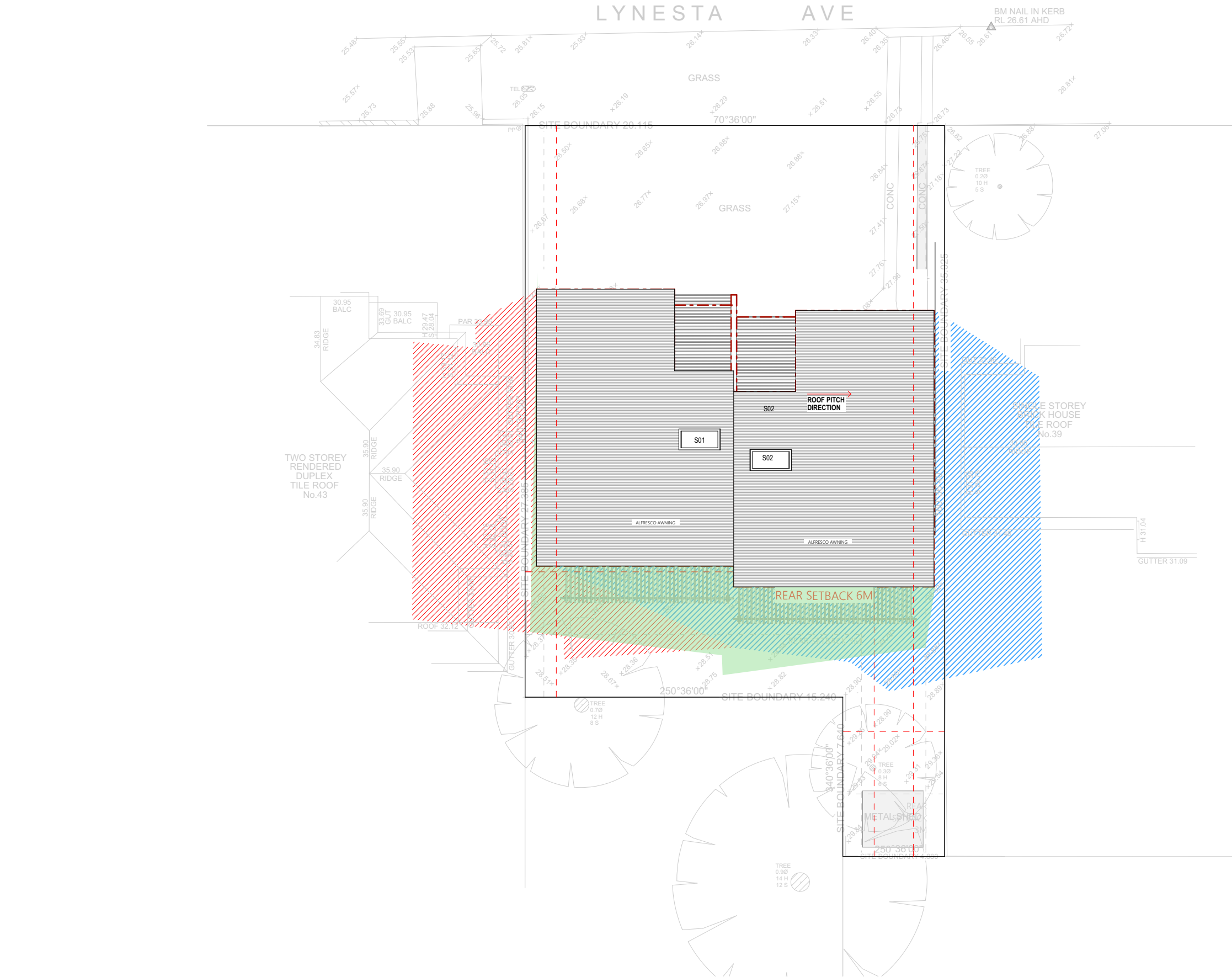
WATERING AT THE TIME OF PLANTING IS CRUCIAL AND CARE SHOULD BE TAKEN TO ENSURE THE PLANTING HOLES AND POTTED PLANTS ARE WELL IRRIGATED BEFORE REMOVAL AND PLACING IN THE GROUND. LONG DEEP WATERING IRREGULARLY ENCOURAGES DEEP ROOT GROWTH ENSURING SUCCESSFUL ESTABLISHMENT. SLOW RELEASE FERTILISER SIMILAR TO OSMOCOTE WITH TRACE ELEMENTS AND LOW PHOSPHOROUS FOR NATIVE PLANTS CAN BE APPLIED TO ENSURE OPTIMAL GROWTH. MAINTENANCE SHOULD BE CONDUCTED FOR SIX MONTHS TO ENSURE ESTABLISHMENT OF THE LANDSCAPE.

MAINTENANCE WORKS SHALL INCLUDE:

- MOW LAWNS AND TRIM EDGES EVERY 10 DAYS IN SUMMER AND EVERY 14 DAYS IN WINTER.
- WATER ALL PLANTING AND LAWN AREAS TO ENSURE ADEQUATE SOIL MOISTURE.
 - REMOVE ANY WEED GROWTH FROM ALL PLANTING AREAS.
 - SPRAY AND CONTROL PESTS AND DISEASES AS REQUIRED.
 - REPLACE PLANTS WHICH FAIL WITH PLANTS OF SIMILAR SIZE AND QUALITY AS ORIGINALLY PLANTED.
 - ADJUST TIES TO PLANTS AS NECESSARY.
 - CORRECT ANY EROSION OR SOIL SUBSIDENCE.
 - MAINTAIN ALL MULCHED AREAS IN A CLEAN AND TIDY CONDITION TO THE DEPTH AS ORIGINALLY SPECIFIED.
 - CORRECT ANY DEFECTS OR FAULTS ARISING FROM DEFECTIVE WORKMANSHIP.

NOTE: THE CONTRACTOR IS NOT TO BE HELD RESPONSIBLE FOR THE THEFT OR VANDALISM OF ANY PLANTS DURING THE MAINTENANCE PERIOD.
NOTE: ON COMPLETION OF THE MAINTENANCE PERIOD AND SATISFACTORY INSPECTION, THE SITE MANAGER SHALL HAND OVER THE ONGOING MAINTENANCE TO THE CLIENT.

PROJECT	41 LYNESTA AVENUE, BEXLEY NORTH			PROJECT #	2017-18
CLIENT	THANH QUACH	DATE #	14/03/18	DWG #	
DWG	LANDSCAPE PLAN	SCALE	1:100@ A2	REVISION:2	
		STATUS	DA		
		SHEET	3 of 3		



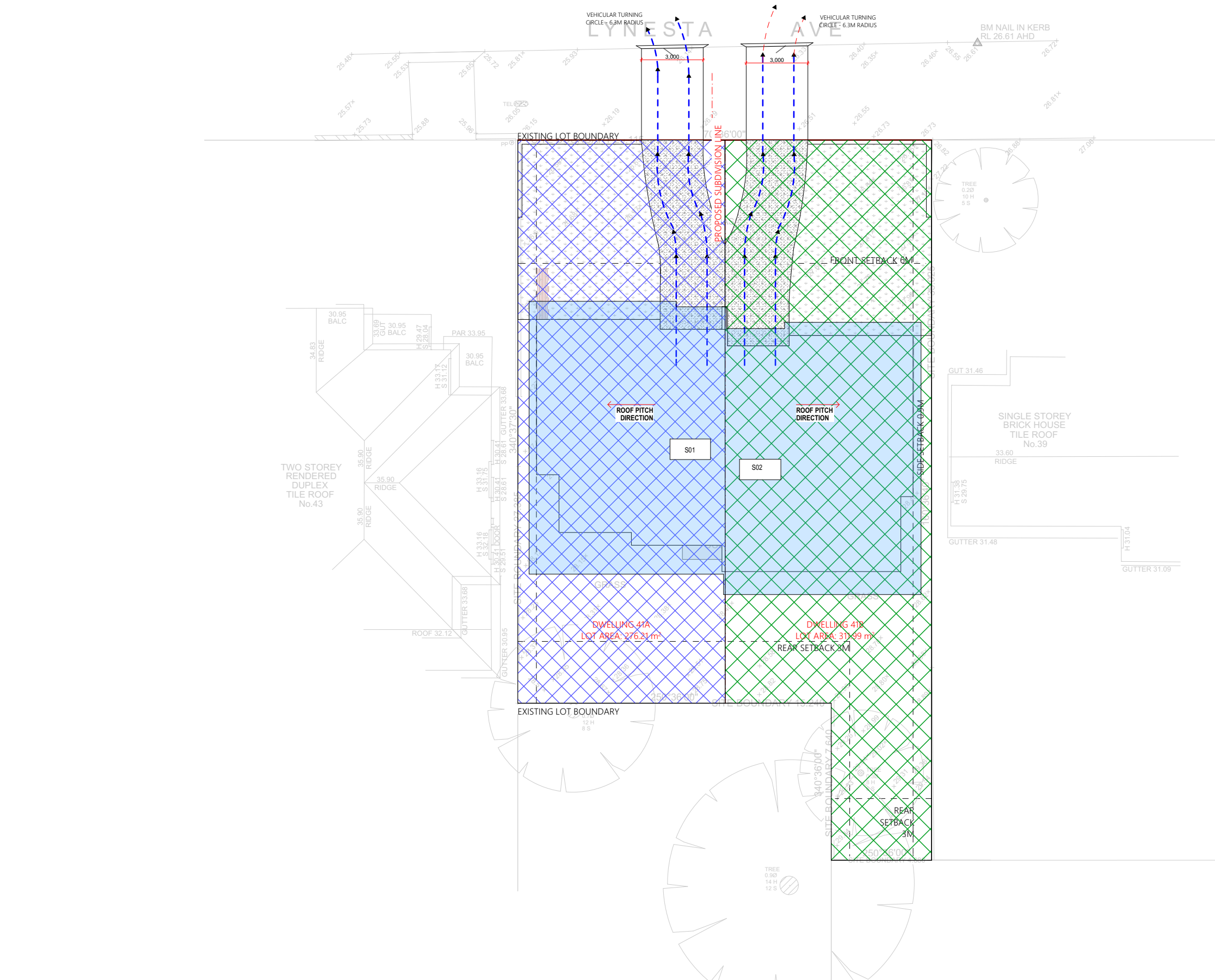
LEGEND:

MARCH 22nd 9am

MARCH 22nd 12pm

MARCH 22nd 3pm

FOR D.A SUBMISSION



SITE AREA:

DWELLING 41A 276.21m²
DWELLING 41B 311.99m²

TOTAL 588.20m²

LEGEND:

- EXISTING LOT BOUNDARY
- SUBDIVISION LINE
- PROPOSED DWELLING
- PROPOSED LOT BOUNDARY (DWELLING A)
- PROPOSED LOT BOUNDARY (DWELLING B)

FOR D.A SUBMISSION



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Contractors must verify all dimensions on site prior to the commencement of any work or the preparation of any drawings.

Figured dimensions to be used in preference to scaled dimensions.



MAI DESIGNS PTY LTD

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ISSUE	AMENDMENTS	DATE
A - E	PRELIMINARY	7/09/2017
F - H	PANEL MEETING AMENDMENTS	15/03/2018
I	RE - SUBMISSION	20/03/2018

PROJECT

DUAL OCCUPANCY

41
LYNESTA AVENUE
BEXLEY NORTH

THANH QUACH

TITLE

TORRENS TITLE PLAN

SCALE	1:200	A3	DRAWING NO.
DRAWN	CHECKED	DATE	CD-19
C.L.	D.M.	20/03/2018	

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2017/501
Date of Receipt:	5 October 2017
Property:	41 Lynesta Avenue, BEXLEY NORTH (Lot 18 DP 35230)
Owner(s):	Mr Thanh Duc Quach Mrs Trang Thi Thu Quach
Applicant:	Mr Thanh Duc Quach
Proposal:	Demolition of existing structures and construction of a two (2) storey attached dual occupancy and Torrens Title subdivision
Recommendation:	Refused
No. of submissions:	Nil
Author:	Teresita Chan
Date of Report:	20 December 2017

Key Issues

The proposal in its current form fails to comply with the numerical provisions of Clause 4.1(3B) of Rockdale Local Environmental Plan 2011 (RLEP 2011) in regard to subdivision lot size for a dual occupancy development. The minimum lot size required is 350sq.m. per lot. The proposal seeks to create two new lots with sizes 276.21sq.m and 311.99sq.m. The applicant has submitted a Clause 4.6-Exception to development standards seeking a variation to the minimum lot size requirement under Clause 4.2A, however, this Clause applies to attached and semi-detached dwellings in the R2 Zone. The proposal is defined as a dual occupancy development and as such the relevant Clause in RLEP 2011 in regard to subdivision is Clause 4.1(3B).

Nevertheless, as the minimum lot size of 350sq.m. applies to both development types (semi-detached dwellings and dual occupancies), the Clause 4.6 justification provided by the applicant has been assessed. For the reasons outlined in this report, the proposed variation to the lot size is considered to be significant and not supported.

In addition, whilst the overall Floor Space Ratio (FSR) for the site complies with the maximum 0.5:1 FSR required under Clause 4.4 of RLEP 2011, the proposed FSR for Dwelling 1 on Allotment A is 0.53:1 and does not comply. This non compliance results in excessive bulk and amenity impacts. A Clause 4.6 has not been submitted for this proposed variation.

For the above reasons the proposal is not supported and as such the development application is recommended for Refusal.

Recommendation

That this Development Application be **REFUSED** pursuant to Section 80(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:

Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy the objectives contained in Part 2.3 of the R2 zone under Rockdale Local Environmental Plan 2011, to enable that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.

Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the numerical provisions of Clause 4.1- Minimum subdivision lot size under Rockdale Local Environmental Plan 2011 as the resulting lots from the subdivision are less than 350 sq.m.

Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the CI4.6 submission by the applicant is not supported.

Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, Dwelling 1 on Allotment A fails to satisfy the controls contained in Clause 4.4 under Rockdale Local Environmental Plan 2011, to achieve the FSR requirement of 0.5:1.

The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the numerical controls of Council's Technical Specification in Part 4.6- Driveway Width of Rockdale Development Control Plan 2011.

Pursuant to the Provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

Background

History

Council's records show that the following application was previously lodged:

- An application under the Infrastructure SEPP (ISP-2012/1) for demolition of the existing dwellings, removal of trees and the construction of six(6) new dwellings with associated four(4) parking spaces, which included the subject site and adjacent site at 39 Lynesta Street Bexley North.

Timeline of the assessment process is stated as follows:

- The development application was lodged on 05/10/2017
- The notification period ended on 19/10/2017
- Letter to Applicant requesting withdrawal of the application sent on 12/10/2017
- Meeting with Council's Manager Development Services and applicant on 16/11/2017

- Amended Statement and Environmental Effects (SEE) and a legal opinion letter submitted on 15/12/2017

Proposal

Council is in receipt of a development application DA-2017/501 at 41 Lynesta Avenue, Bexley North, which seeks consent to carry out demolition of existing structures and construction of a two(2) storey attached occupancy and Torrens Title subdivision.

Specifically, the proposal consists of:

Dwelling 1 on Allotment A

Ground floor:

- One(1) Lounge area
- One(1) Dining area, comprising with an open kitchen
- One(1) Laundry room
- One(1) powder room
- A driveway

First Floor:

- Two(2) bedrooms with robes
- One(1) master bedroom with en-suite and robes
- One(1) bathroom
- A balcony

Dwelling 2 on Allotment B

Ground floor:

- One(1) Lounge area
- One(1) Dining area, comprising with an open kitchen
- One(1) Laundry room
- One(1) powder room
- A driveway

First Floor:

- Two(2) bedrooms with robes
- One(1) master bedroom with en-suite and robes
- One(1) bathroom
- A balcony

Torrens Title Subdivision

The proposal proposes to subdivide the land into two(2) parcels- 41 and 41A Lynesta Avenue. The size of the resulting allotments are stated as follows:

Allotment A (Dwelling A): 276.21 sq.m

Allotment B (Dwelling B): 311.99 sq.m

Fencing

There is no boundary fences on the existing site, and no boundary fences are proposed nor stated in the Statement of Environmental Effect.

Use of materials and finishes

The use of materials and finishes of the proposed development are primarily rendered masonry, comprising of painted finishes , fixed and openable glass windows and colour-bond roof.

Trees and vegetation

The proposal does not involve any removal of trees.

Site location and context

The subject site is known Lot 18 DP 35230, 41 Lynesta Avenue, Bexley North. The site is an irregular hexagon shaped with front boundary widths of 20.115 m, and rear boundary width of 15.24 m, and 4.88 metres. The side boundaries are 27.385 m deep. The total site area is 588.2 sq.m. The topography of the site is such that it is falling gradually from the rear to the front by approximately 3 metres.

The subject site contains a single(1) storey residential dwelling, with a detached metal shed at the rear. The site is located on the south eastern side of Lynesta Avenue, between Edward Street and Lynesta Avenue. Adjoining development to the sides includes a two storey dual occupancy approved in 2006 on a site with an area of approximately 560sq.m. and a one(1) storey residential dwelling. A two(2) storey residential dwelling is situated on the rear property. There is a mix of one to two storey residential dwellings and dual occupancies along Lynesta Avenue.

The subject site is located within 150 metres radius of Gilchrist Park and Bexley Bowling Club.

There is onexeight(8) m high Jacaranda tree located in the South East corner of the site, which is to be retained in the proposal. No removal of trees have been proposed.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

S.79C(1) - Matters for Consideration - General

S.79C(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The applicant has submitted a multi dwelling BASIX Certificate for the proposed development. The Certificate number is 854934M.

The commitments made result in the following reductions in energy and water consumption:

Reduction in Energy Consumption 54%

Reduction in Water Consumption 41%

Thermal Comfort Pass

In this regard, the proposal satisfies the provision and objectives of this SEPP.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R2 Low Density Residential	No - see discussion	No - see discussion
2.6 Subdivision - consent requirements	Yes	Yes - see discussion
2.7 Demolition requires consent	Yes	Yes - see discussion
4.1 Minimum subdivision lot size	No - see discussion	No - see discussion
Dual occupancy	No - see discussion	No - see discussion
4.3 Height of buildings	Yes	Yes - see discussion
4.4 Floor space ratio - Residential zones	Yes	Yes - see discussion
4.6 Exceptions to development standards	No - see discussion	No - see discussion
5.9 Preservation of trees or vegetation	Yes	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.4 Airspace operations	Yes	Yes - see discussion
6.12 Essential services	Yes	Yes - see discussion

2.3 Zone R2 Low Density Residential

The subject site is zoned R2 - Low Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as Dual occupancy which constitutes a permissible development only with development consent. The objectives of the 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 ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.

The proposed development is considered to be inconsistent with one of the objectives of this Clause as follows:

- *To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.*

Comments: The subject site has an area of 588.2 sq.m. The proposal is seeking Council's approval for subdividing the existing lot into two allotments of 276.21 sq.m and 311.99 sq.m in size. Given the constrained lot size, the proposed Floor Space Ratio (FSR) of Dwelling 1 on Allotment A fails to comply with the minimum FSR requirement, creating an overdevelopment of the land and impacting on the character and amenity of the surroundings.

Whilst the proposed development is permissible within the R2- Low Density Residential zone, the

intensification of the site will impact on existing and envisaged subdivision patterns and will potentially create impacts on the amenity of the area. The proposal is not considered to be satisfactory with regard to zone objective 3.

2.6 Subdivision - consent requirements

The development application is seeking Council's approval for the Torrens Title Subdivision of the lots. In accordance with Clause 2.6(1) - Subdivision of Rockdale Local Environmental Plan 2011 (RLEP 2011), *'Land to which this Plan applies may be subdivided, but only with development consent.'*

Hence, the subject site can only be subdivided with development consent.

2.7 Demolition requires consent

The proposed development seeks consent for the demolition of all existing structures on site. Hence satisfies the provisions of this Clause.

4.1 Minimum subdivision lot size

Clause 4.1(3B)(a) requires a minimum subdivision lot size of 350sq.m. for dual occupancies. The proposal results in subdivision lot sizes of 276.21 sq.m and 311.99 sq.m and does not comply with this clause. The applicant has submitted a Clause 4.6 justification, which is not supported. Details are written in the later part of the report.

Dual occupancy

The proposed variation of each allotment has been calculated as follows:

Allotment A

276.21 sq.m = 21.08% under the 350 sq.m minimum subdivision lot size

Allotment B

311.99 sq.m = 10.86% under the 350 sq.m minimum subdivision lot size

To achieve the 350sq.m. lot size required under this clause, the overall lot size should be 700sq.m. The existing lot is 588.2sq.m., which represents 111.8 sq.m deficiency of the required 700 sq.m to permit subdivision.

The proposed variation exceeds 10% of the required minimum subdivision lot size. Approval of the subject application would permit a form of development not supported by the RLEP 2011. This will set an undesirable precedent as this significant variation has not been supported by Council in the past since the adoption of RLEP 2011. Further, the proposal demonstrates the inability of the lot size to accommodate a dual occupancy housing development. Details of the impacts will be discussed in the later part of the assessment report.

4.3 Height of buildings

The height of the proposed building is 7.9 m and therefore does not exceed the maximum 8.5m height shown for the land on the Height of Buildings Map.

The proposal complies with the development standard and therefore satisfies this Clause.

4.4 Floor space ratio - Residential zones

The Gross Floor Area (GFA) has been calculated as follows:

Allotment A(Dwelling 1): Site area= 276.21 sq.m

Ground Floor:

75.2 sq.m

First Floor:

70sq.m

Total GFA: 145.2 sq.m

FSR of Dwelling1 (GFA of Dwelling 1/ Size of allotment A): 0.53:1

Allotment B (Dwelling 2): Site area= 311.99 sq.m

Ground Floor:

75.2sq.m

First Floor:

69.6 sq.m

Total GFA: 144.8 sq.m

FSR of Dwelling 2 (GFA of Dwelling 2/ Size of allotment B): 0.46:1

The Gross floor area of the proposed development has been calculated as 284.8 sq.m over a site area of 588.2 sq.mn. In this regard, the proposed overall floor space ratio (FSR) for the building is 0.49:1 and therefore does not exceed the maximum FSR for the land 0.5:1 as shown on the Floor Space Ratio Map.

Nevertheless, the proposed floor space ratio of Dwelling 1 on Allotment A will not be complying with the maximum FSR numerical control of 0.5:1 on the proposed new lot. The resultant FSR is 0.53:1. A Clause 4.6 justification has not been provided. The proposal is not supported on this grounds.

4.6 Exceptions to development standards

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

(3)(a) that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and

(3)(b) that there are sufficient environmental planning grounds to justify the variation.

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

(a) the consent authority must be satisfied that:

(i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, 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 of the relevant zone.

- 5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and
- 5(b) the public benefit of maintaining the development standard.

Development Standard to be varied

The applicant seeks variation to Clause 4.1(3B)- Minimum subdivision lot size, which states:

- (3B) Despite sub clause (3), development consent may be granted to the subdivision of a lot on which there is an existing dual occupancy, or on which a dual occupancy is proposed, if:
- (a) the area of each lot resulting from the subdivision is equal to or greater than 350 square metres, and
- (b) each of the lots will have one of the dwellings on it.

The subject site has a lot size area of 588.4 sq.m and the subdivided resulting allotments are 311.99 sq.m and 276.21 sq.m. Both allotments fail to satisfy the 350 sq.m minimum subdivision lot size by 10.86% and 21.08% respectively.

Justification for the variation

The applicant has provided a justification to the variation at lodgement of the development application, followed by an updated CI 4.6 submission and legal advice.

In addressing Clause 4.6(3)(a), the applicant makes reference to the Four2Five Pty Ltd case and the necessity to demonstrate that there are sufficient environmental planning grounds particular to the circumstances of the proposed development of the site and that it is necessary to demonstrate that there is something more than achieving the objectives of the standard. It is stated that rather than being satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, the commissioner had to be satisfied that the applicant's written request has adequately addressed the matters in subclause 3(a) that compliance with the development standard is unreasonable and unnecessary. Based on case law, the applicant argues that the objectives of the standard are achieved notwithstanding the non compliance with the standard. In doing so, the applicant makes reference to the objectives of clause 4.2A. It is noted that Clause 4.2A provides controls for attached and semi-detached dwellings in Zone R2. The proposal is defined as a dual occupancy development, not a semi-detached dwelling. The objectives relevant to the proposal are stated in clause 4.1(1) as follows:

- 4.1(1) (a) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,
- (b) to minimise any likely impact of subdivision, and development on subdivided land, on the amenity of neighbouring properties,
- (c) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.

As stated above, the applicant has failed to identify and address the above objectives. In the submission, the applicant goes further to argue that clause 4.1A of the RLEP 2011 is not relevant. However, in addressing clause 4.2A, the applicant made the following statement, which is relevant to the assessment:

The proposed development is consistent with the zoning objectives.

The proposal 'encourages diversity in lot sizes and built form, and provides increased opportunity for housing affordability.'

'It would be unreasonable and unnecessary to require strict compliance with the development standard as the site is not unduly constrained by its size or shape to accommodate the proposed development which is permissible and meets the objectives of the site.'

The proposal complies with all other controls such as landscaping, setbacks etc.

'Low density is a matter of perception viewed from the street and the architectural plans accord with the visual characteristics of "low density".'

In regard to demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard, the applicant argues:

- The existing area supports a varied outcome of allotments and built form and the proposed development is consistent with an established precedent in the immediate vicinity of the site, as well as in the surrounding Bexley North Locality. There are two semi detached dwellings already approved and built in Lynesta Avenue:
43 and 43A Lynesta Avenue- two storey semi detached dwellings on 278 sq.m allotments
19 and 19A Lynesta Avenue- two storey semi detached dwellings on 273 sq.m allotments
- Subdivision patterns and density evolve over time. An analysis of 57 allotments in the area bound by Lynesta Avenue, Edwards Street, Oliver Street and New Illawarra Road, shows that the prevalent lot size is between 373 sq.m and 420 sq.m, with examples of smaller lot sizes of 273 sq.m which occupy dual occupancy development. In the general vicinity there are examples of dual occupancy development on smaller allotments than the subject allotment.
- The proposed development is compatible with the existing and evolving streetscape character of the area, one which contains two storey dwellings noting that 15 properties out of 46 properties in Lynesta Avenue are two storey.
- The subject site has a land parcel shape which is an anomaly when considered in the context of the surrounding subdivision pattern, as well as in the broader Bexley North Locality. The surrounding subdivision pattern comprises rectangular shaped allotments of consistent depth but with varied widths. The subject site is irregular in shape in that south east portion of the site has historically been truncated and forms part of the allotment directly to the south at 47 Edward Street. If the truncated portion of land was applied to the site area, the resultant allotment would be 705 sq.m, thereby meeting the numeric requirement of 350 sq.m for each semi- detached dwelling.
- There are examples in the vicinity of the subject site of dual occupancy development on smaller lots, including the one adjacent to the west at 43 Lynesta Avenue.
- The subject site has a frontage of 20.12m, which is significantly wider than other properties in Lynesta Avenue which has an average frontage of between 12.5 metres to 14.6 metres. The wider frontage of the subject site ensures an appropriate streetscape outcome particularly as the design of the dwellings and landscaping is of high quality in terms of design and presentation.
- Where the built form is determined to be an appropriate outcome for the site, subdivision is a secondary consideration.
- The allotment is a suitable size and shape to support the semi- detached dwellings and the landscape area provided exceeds Council's minimum requirements by 21%. This results in a compensating effect when considered against the site area shortfall. The landscape treatment to the street is also of high quality and will result in a high quality streetscape.
- A development that strictly complied with the minimum lot size would not be discernible in the streetscape. The lack of depth across the entire rear/ southern boundary could not be appreciated from the street. Likewise the numeric non- compliance would not be comprehended other than on paper. The non compliance is therefore an abstract notion, and in this instance compliance is unnecessary and unreasonable particularly as a highly compliant physical

development will be achieved at the Site which is a more tangible measure of acceptability within the streetscape.

- The proposal development remains consistent with the objectives of the R2- Low Density Residential zone despite the numerical non- compliance with the minimum lot size.
- A compliant proposal, one that would have 350 sq.m allotment would produce a poor streetscape outcome than the proposed development application as the resultant building would be larger and bulkier and would have a more dominant visual impact in the street.
- The proposed development will not result in significant adverse impacts upon the locality or adjacent residential properties by way of overshadowing, view loss, privacy, bulk and scale, regardless of whether the land was subdivided or not. Therefore strictly adhering to the minimum lot size control would serve no planning purpose where it is a direct function of a complying built form.
- The proposed development does not result in the loss of public or private views.

In demonstrating that the proposal is in the public interest and consistent with the objectives of the zone (Clause 4.6(4)(ii)), the applicant states that the proposed development will satisfy the zone objectives as it will provide for the housing needs of the community, it minimises impacts on the character and amenity of the area as it is fully compliant with the height, FSR and setback controls; the design of the building is of a high quality and the proposed development 'represents an efficient and appropriate use of land that is compliant with the environmental capacity of the site and its R2-Low Density Residential zoning.'

Assessment Comments

An assessment of the information provided by the applicant has been carried out to ascertain whether the proposal satisfies clause 4.6(4)(a) as far as to allow the Bayside Planning Panel to issue development consent. In this regard it is considered that the applicant has adequately addressed the matters in subclause (3). However, the applicant has failed to address the objectives of the development standard as set out in clause 4.1(1), but rather made reference to clause 4.2A. Nevertheless, even when assessing the arguments put forward to justify the undersized site area, the proposal has been found to be inconsistent with the objectives of the standard and inconsistent with at least one of the zone objectives. Compliance with the development standard is considered to be reasonable and necessary in this case and in the public interest for the following reasons:

Reference to existing subdivisions approved under previous planning controls is not valid. If the intent and vision for the R2 - Low Density Zone was to encourage the subdivision of smaller lots, those previous controls would have been adopted by current policies. Council made a conscious decision to only allow subdivision in lots greater than 700sq.m. (to achieve a minimum 350sq.m.) and therefore clause 4.1(3B) was introduced into RLEP 2011. This requirement is further supported by clause 4.2A, which adopts similar controls for similar development types such as detached and semi-detached dwellings.

Since the introduction of the RLEP 2011, Council has consistently applied this control, but only allowing very marginal variations in the range of 10sq.m. maximum.

Approving the proposed development will create an undesirable precedent for this and similar development types. Smaller subdivision patterns as the one proposed are uncharacteristic of the R2 Low density area. This is contrary to objective (a) of the standard.

One of the lots does not comply with the maximum FSR requirement; which demonstrates that the proposal is an overdevelopment of the land. This is inconsistent with objective (c) of the standard. The proposal has potential for creating impacts to the character and amenity of the area as the

intensification of the use as proposed, if extended to the R2 Low density are will impact on the future character of the R2 Zone. This is inconsistent with objective 3 of the R2 Zone.

The proposal does not show excellence in design so as to achieve a positive contribution to the streetscape and character of the area.

5.9 Preservation of trees or vegetation

The site contains trees that are subject to approval by Council under clause 5.9 of RLEP 2011 conferred by:

- (a) development consent, or
- (b) a permit granted by Council.

No removal of trees and vegetation have been proposed in the proposal.

6.2 Earthworks

Earthworks including excavation are required on site for footings and slabs. The objectives and requirements of Clause 6.2 of RLEP 2011 have been considered in the assessment of this application. It is considered that the proposed earthworks and excavation will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 100 metres to Australian Height Datum (AHD). The proposed building height is at 7.6 metres to AHD, with RL 35.428 and in this regard, it is considered that the proposed development will have minimal adverse impact on the OLS and hence is acceptable with regards to this Clause.

6.12 Essential services

Services will generally be available on the site.

S.79C(1)(a)(ii) - Provisions of any Draft EPI's

No relevant proposed instruments are applicable to this proposal.

S79C(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Rockdale Development Control Plan 2011

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.3 Flood Risk Management	Yes	No - see discussion
4.1.4 Soil Management	Yes	Yes - see discussion
4.1.7 Tree Preservation	Yes	Yes - see discussion
4.1.9 Lot size and Site Consolidation - Dual Occupancy	No - see discussion	No - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.2 Streetscape and Site Context - General	No - see discussion	Yes - see discussion
4.3.1 Open Space & Landscape Design - Low & medium density residential	Yes	Yes - see discussion
4.3.2 Private Open Space - Low density residential	Yes	Yes - see discussion
4.4.2 Solar Access - Low and medium density residential	Yes	Yes - see discussion
4.4.3 Natural Lighting and Ventilation - Residential	No - see discussion	No - see discussion
4.6 Parking Rates - Dual Occupancy	Yes	Yes - see discussion
4.6 Car Park Location and Design	Yes	Yes
4.6 Driveway Widths	No - see discussion	No - see discussion
4.7 Air Conditioning and Communication Structures	Yes	Yes
4.7 Waste Storage and Recycling Facilities	Yes	Yes
4.7 Laundry Facilities and Drying Areas	Yes	Yes
5.1 Storey Height and Setbacks - Dual occupancy & Semi-detached dwelling	Yes	Yes - see discussion
5.1 Residential Subdivision	Yes	Yes - see discussion

4.1.3 Flood Risk Management

The subject site is classified as being affected by the 1% Annual Exceedance Probability (A.E.P) flood. The submitted floor plan demonstrates compliance with the required minimum habitable floor level. However, the proposed FFL of the alfresco and garage were not indicated in the floor plans. Further information would be required in this regard if the application is recommended for approval.

4.1.4 Soil Management

The Soil & Water Management Plan has been submitted and general erosion and sediment control strategies are proposed to ensure that the potential for impact on adjoining land and surrounding waterways is minimised.

In this regard, the proposed development is considered to satisfy this clause.

4.1.7 Tree Preservation

The development proposal does not involve any removal of trees and vegetation. Council's Tree Management Officer has recommended the protection and retention of existing Jacaranda tree located at the rear of the site and trees adjoining the site.

4.1.9 Lot size and Site Consolidation - Dual Occupancy

The proposal seeks the Torrens Title Subdivision of the dual occupancy development into two(2) parcels, with the resultant lots having an area of 312 sq.m and 276 sq.m, which fails to satisfy the numerical control of this Clause. A minimum lot size of 700 sq.m and a minimum site frontage of 15 metres is required for a dual occupancy development. The subject lot has an area of 588.2 sq.m, and it is 111.8sq.m under the required 700 sq.m to permit subdivision. The subject site has a street frontage of 20.115 m and complies with the minimum frontage requirement.

4.2 Streetscape and Site Context - General

The proposal is located in a R2- Low Density Residential Zone. The immediate context is relatively low scale, consisting of single(1) storey and two (2) storey residential dwellings.

Given the large street frontage and the need to fit two dwellings on the lot, there is limited opportunity to articulate the buildings to achieve a pattern more sympathetic to the existing streetscape. There is an attempt to match the streetscape by the incorporation of materials and finishes consistent with existing dwellings in Lynesta Street, however the buildings appear bulky as seen from the street. As such the proposal is not considered to present an optimal response to the existing and future character of the street. The proposal fails to comply with the objectives of the Clause.

4.3.1 Open Space & Landscape Design - Low & medium density residential

The proposal includes a landscaped area of 168.7 sq.m. The proposed open space and landscape design satisfy the minimum 25% landscaped area on site, hence complies with the Clause.

4.3.2 Private Open Space - Low density residential

The proposal has a proposed private open space of 120 sq.m, which satisfies the minimum private open space of 80 sq.m. Thus, complies with objectives and controls of the Clause.

4.4.2 Solar Access - Low and medium density residential

The applicant has submitted a set of shadow diagrams, showing the overshadowing impacts of March 22 and June 22 from 9 a.m to 3 p.m. The proposed dual occupancy development will be overshadowing the property on 43 & 43A Lynesta Avenue and 39 Lynesta Avenue. The detailed description of the overshadowing impacts are illustrated as follows:

At 9 a.m- June 22

The proposed development will be overshadowing 1/2 of the two(2) storey dual occupancy dwelling and the private open space of 43 & 43A Lynesta Avenue.

The impacted windows are located on the Eastern elevation and Southern elevation of the building.

At 12 p.m- June 22

There are no adverse impacts on the adjoining buildings.

At 3 p.m- June 22

The proposed development will be overshadowing one(1) window on the western elevation of the single(1) storey residential dwelling on 39 Lynesta Avenue. In addition, 80% of the private open space of 39 Lynesta Avenue will receive inadequate solar access as well.

Whilst there are overshadowing impacts on the adjoining dwellings, properties on 43& 43A Lynesta Avenue and 39 Lynesta Avenue will be able to receive a minimum of three(3) hours direct sunlight in habitable rooms and at least 50% of the private open space between 9am and 3pm in mid winter. Therefore, the proposal is considered to have minimal impact on the level of sunlight currently received by adjoining properties and complies with the Clause.

4.4.3 Natural Lighting and Ventilation - Residential

A minimum ceiling height of 2.7m is required for habitable rooms. The ceiling height of the proposed development have been stated as follows:

Ground Floor: 3.2 metres

First Floor:

Discrepancies were found between the CL of the proposed first floor between North & South elevations

plan and East & West elevations plans. Amended information will be required if this development application is recommended for approval.

4.6 Parking Rates - Dual Occupancy

The development will have minimal impact on access, parking and traffic in the area. Two carparking spaces are proposed per dwelling in accordance with Council's DCP 2011. The proposal is satisfactory in regards to traffic and parking.

4.6 Driveway Widths

The proposal involves two individual access driveways of width 3 metres each at the boundary, and a separation width of 0.25 metres. This represents a combined single driveway of 6.25m. In accordance with Rockdale Technical Specification- Traffic, Parking and Access, a minimum of 6 metres separation width between two(2) individual access driveways is required. Alternatively, a combined single driveway with a maximum 5m width at the boundary is to be proposed.

The proposal fails to comply with the numerical provisions, hence does not comply with the objectives and controls of the Clause. Amendments to the plans would be required if the development application is recommended for approval.

5.1 Storey Height and Setbacks - Dual occupancy & Semi-detached dwelling

The setbacks have been measured as follows:

Side setbacks

Ground Floor: 0.9m

First Floor: 1.5m

Rear Setbacks

Ground floor: 6.3 m

First floor: 8.4 m

Front setback

6.8m for ground floor and first floor. This is considered to be consistent with the predominant setbacks in Lynesta Avenue.

The proposed setbacks comply with DCP2011.

5.1 Residential Subdivision

The subject site has a street frontage of 20.115 m.

S.79C(1)(a)(iv) - Provisions of regulations

Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of AS 2601:1991 - *Demolition of Structures* when demolition of a building is involved. No conditions will be imposed in the Notice of Determination as this development application is subject to refusal.

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

Clause 92 EP&A Regulation 2000 – Additional Matters

This development application is recommended for refusal. No conditions of consent will be imposed to ensure compliance with the standard.

S.79C(1)(b) - Likely Impacts of Development

The likely impacts resulting from the proposed development on the natural and built environments have been assessed and are considered to be inconsistent with the planning controls for the site.

S.79C(1)(c) - Suitability of the site

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. A thorough assessment of the proposal's impacts on the natural and built environment has been undertaken. The subject site has been identified as not being suitable to accommodate Torrens Title subdivision and dual occupancy development, thus recommended for refusal.

S.79C(1)(d) - Public submissions

The development has been notified in accordance with the provisions of Rockdale DCP 2011. Council did not receive any submissions on this proposal.

S.79C(1)(e) - Public interest

An opportunity exists to develop the site in its own right for a dwelling house development. This option is considered to be a reasonable and suitable planning outcome, consistent with the Rockdale Local Environmental Plan (RLEP 2011), and would enable the orderly development of the land in accordance with the objects of the EP&A Act 1979.

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the development application, the proposal is not considered to be in public interest because it would permit a form of development on land not contemplated by the RLEP 2011. The proposal will create an undesirable precedent. For the reasons outlined in this report, the proposal is not considered to be in the public interest.

S94A Fixed development consent levies

Section 94A of the Environmental Planning and assessment Act 1979 (as amended) is not applicable to dual occupancy developments.

Schedule 1 - Draft Conditions of consent
