

For DA/2022/1279/1 Council and the applicant have failed to come to an agreement in respect of the following conditions:

### Condition 41:

Koala Fencing	
<p>Koala fencing in accordance with the <i>CPCP Koala Fencing Guidelines</i> is to be installed on all certified land adjacent to mapped koala corridors under the CPCP prior to the issue of a Subdivision Certificate for the relevant stage. Temporary koala-proof fencing will be acceptable during construction stages where permanent fencing installation is delayed. If koala fencing is not considered feasible to install at some locations due to site-specific conditions, the beneficiary of this consent is to collaborate with Council to agree on alternative measures consistent with Section 8.3.4.2.1 of the Wilton Development Control Plan.</p>	
<p><i>Condition reason: Protection of koala corridors.</i></p>	
Council Comment	Landcom Comment
<p>Although CPCP Mitigation measures do not apply to Wilton, measures are included in the Wilton Growth Area Development Control Plan (WGA DCP 2021) for certified land adjacent to koala habitat.</p> <p>The WGA DCP 2021 section 8.3.4.2.1 requires that:</p> <p><i>For all certified land adjacent to koala habitat <u>where a koala exclusion fence is not installed</u>, the following development controls apply:</i></p> <ol style="list-style-type: none"> <li><i>Manage roadside vegetation and landscaping adjacent to koala habitat to minimise the height of ground cover and increase the visibility of any roadside fauna.</i></li> <li><i>Install road design structures such as underpasses, fauna bridges and overpasses for the protection of koalas and maintain by the proponent for a time period consistent with any approval conditions. Reference RMS Biodiversity Guidelines.</i></li> <li><i>Deliver dog containment fencing in accordance with the approved Neighbourhood Plan fencing strategy within open space and public recreation areas.</i></li> <li><i>Incorporate dog containment fencing in the design of each residential lot.</i></li> </ol> <p>[Emphasis added by Council]</p> <p>As the application has not satisfied points 1 – 4 above, the requirement for koala fencing has been included as Condition 41.</p>	<p>Concerns with the approach is summarised as:</p> <ul style="list-style-type: none"> <li>koala fencing is not specifically required in any controls</li> <li>DPE confirmed CPCP mitigation measures do not apply to North Wilton.</li> <li>Unclear if koala fencing is a Council requirement or a DPE requirement.</li> </ul>

**Condition 49:**

**Sharepaths**

Before the issue of a Subdivision Works Certificate, the Certifier must ensure the subdivision works certificate plans and specifications detail the following required amendments to the approved Civil design plans prepared by Stantec:

1. Shared use Pathways on the sub arterial road (Road 108) must be increased to a minimum 3.0 metres wide.

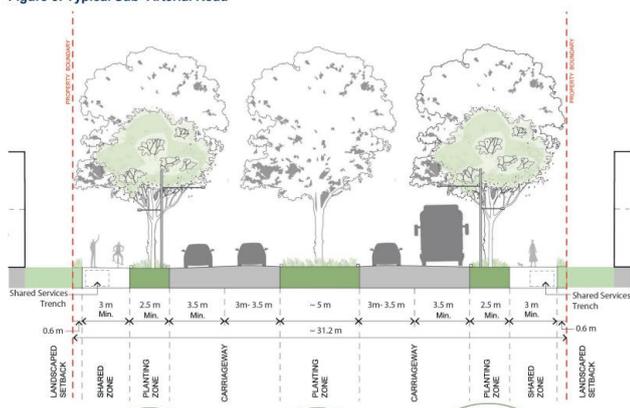
*Condition reason: To ensure compliance with WGA DCP 2021*

**Council Comment**

Council had previously understood that the applicant had agreed to 3m sharepaths as per request for information (RFI) response dated 8 September 2023 (page 4).

Council notes that the WGA DCP 2021 requires the design of streets to be consistent with the sections set out in Figure 3 to Figure 8. Figure 3 provides for the cross section for the sub-arterial road, this requires provision of two 3m shared paths:

Figure 3: Typical Sub-Arterial Road



The earlier section of the sub-arterial road approved with DA/2019/662/1 has also been conditioned for a 3m share paths either side of the road. This section of the sub-arterial will follow on from DA/2019/662/1 and it is logical for the 3m wide footpath to continue.

There is adequate room within the verge to accommodate the 3m wide footpath, infrastructure and landscaping.

It is noted that applicant has pointed to Neighbourhood Plan No.1 potentially prevailing over the 3m wide path requirements. Council is not in agreement. Section 2.5 of Neighbourhood Plan No.1, references compliance with movement section of the WGA DCP. The 2.5m paths referenced apply to the proposed pedestrian/cycle green path network shown as the green dotted line on Figure 4 (within the subdivision and around bushland).

**Landcom Comment**

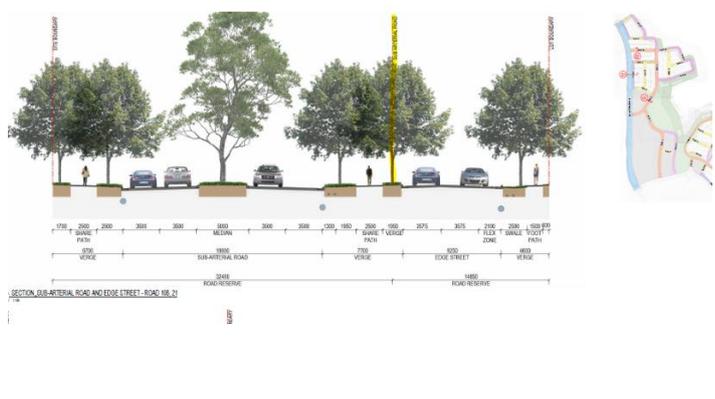
*Regarding the shared path in the sub-arterial road, our intent with the last RFI response was to ensure 2.5m shared paths on either side of the road to provide adequate room on either side of the shared path in the verge for landscaped area for a boulevard of trees on either side of the shared paths.*

*A 2.5m shared path is a much better outcome as there is less hardscape with additional room for soft landscaping on either side of the path, particularly for a higher order road, increasing the overall look and feel of the streetscape. The less concrete / hardscape, the better as we are conscious of the heat island effect.*

*See below section from the latest landscape plans – note for the eastern side of the sub-arterial road, we had intentionally ensured continuity and cohesiveness to where it adjoins the local road (i.e. road 21 and road 27). This intent would not work with a 3m shared path.*

*There will be also less landscaped area for two trees on either side if the shared path was to be 3m - noting that for the local roads, the landscaped area in the verges for trees range from 1.65m-2.5m.*

*The North Wilton NP1 in the DCP originally showed on-street cycle paths on the sub-arterial road which was 3m, however it references a minimum shared path width of 2.5m (it is not referencing that it only applies to shared paths within the bushland – it is a blanket control applying to all shared paths). Given Council are now requesting shared paths for the sub-arterial road, we have applied the minimum 2.5m for shared paths.*



**Condition 63:**

<b>Water Sensitive Urban Design</b>	
Amendments to the Civil Engineering Plans are to be prepared and provided for Council approval to indicate additional water sensitive urban design infrastructure in the form of curb inlets with infiltration pits/trenches are to be implemented to support all street trees.	
<i>This is a requirement to fulfil the objectives in the Wilton DCP regarding the 3.3.1 Water Cycle Management. This is also a requirement to ensure a resilient/healthy canopy within the development can be retained into the future under a changing climate.</i>	
Council Comment	Landcom Comment
<p>While street trees will be connected to recycled water irrigation, there is also the need to meet Council’s water volume reduction target.</p> <p>Street Tree Irrigation (with Waste Water) and the provision of WSUD elements (Stormwater) are separate items and achieve separate targets. The two can be used to provide an integrated system for street trees. Note that recycled water can be turned off and on and can be relied upon with more certainty in times of drought.</p> <p>It is noted that the current design, while meeting targets in Table 2 of the WGA DCP 2021, did not meet Council’s volume reduction target. Note the WGA DCP 2021, also references compliance with Council’s Engineering Design Specifications, including requirements for WSUD and volume reduction (refer to 3.3.2 control 1). The Council WSUD targets are required to achieve the WGA DCP outcomes. It is also noted one of the principles of the North Wilton Neighbourhood Plan No.1 is to –</p> <p style="padding-left: 40px;"><i>e. Ensuring water is captured, recycled and reused.</i></p> <p>The volume reduction target is important to ensure health and resilience of the Nepean River system. While it has been acknowledged that the site is constrained, and the development unable to provide for rainwater tanks on individual lots due to recycled water connection (thus limiting ability to retain large volumes of water in this manner), the current design has not demonstrated that all reasonable and practical measures to maximise water retention have been considered.</p> <p>The current design provides approximately 30% of the landscaping in the street verge to be connected to street stormwater system. It is considered that there is additional opportunity to capture some of this water if kerb inlets with infiltration pits/trenches were conditioned for those trees not connected. Specifications for these inlet pits were provided to the applicant – similar system having been adopted in subdivisions within Blacktown LGA.</p>	<p><i>If we provide the irrigation, no need for this? Also noted that this does not contribute to volume reduction.</i></p> <p><i>3.3.1 are objectives in the DCP. Also there is discrepancy in the provisions in the DCP as Council has required us to look their own WSUD targets rather than the DCP targets. Further, the kerb inlets / infiltration trenches are not referenced in Council’s design and construction specs which is referred to in DCP.</i></p> <p><i>Unreasonable condition. They are uncertain and ambiguous.</i></p> <p><i>This condition is not providing certainty as it does not indicate what ‘additional’ means, and Council could hold us to providing 100 more of these if required. Further the note that they are needed to support all street trees can be taken as one infiltration pit for each street tree.</i></p> <p><i>Risk of taking too long to negotiate with Council regarding what is appropriate to be provided when we need to obtain SWC</i></p> <p><i>There are considerable cost implications for this as essentially a new network within the streets have to be provided</i></p>

<p>While the applicant has noted that impacts to volume reduction will be minimal, Council has not received any modelling as evidence, or alternative designs for consideration.</p> <p>It is also noted that this is one of the first applications being approved under WGA DCP 2021, and subsequent applications may look to the precedent set with this development.</p>	
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### Condition 132:

Street Tree Protection	
<p>Before the issue of Subdivision Certificate, the person or entity having the benefit of this consent must prepare a written <b>Street Tree Protection Strategy</b>, on the measures proposed to protect street trees and associated irrigation systems from damage for a period of 5 years from the date of subdivision registration. The strategy should include measures to:</p> <ol style="list-style-type: none"> <li>ensure all purchasers, land owners and builders are informed of their obligations to protect and ensure no impact on existing landscape infrastructure within the frontage of the property;</li> <li>promote and educate on the benefits of street trees;</li> <li>provide physical protections to street trees and irrigation infrastructure; and</li> <li>inspect and replace/rectify damage as soon as it occurs.</li> </ol>	
<p><i>Condition reason: To provide clear measures for the protection of street trees.</i></p>	
Council Comment	Landcom Comment
<p>Council is seeking: -</p> <ul style="list-style-type: none"> <li>that the applicant implements a formal approach to informing and educating future purchasers/builders on importance of street trees.</li> <li>A maintenance strategy similar to other strategies for Council Asset Protection – i.e Basin Strategy.</li> </ul> <p>Noted in the past there has been issues with what is considered ‘maintenance’ and liability when it comes to third-party damage to trees.</p> <p>The protection of these trees also contributes to meeting the tree canopy coverage targets as required within the WGA DCP 2021. It is considered that the strategy is critical to tree survival. Note there is also a heavy reliance on trees within the road reserve for this canopy target to be reached.</p> <p>It is understood that the applicant may already have arrangements in place and therefore all that is required is for these arrangements to form part of a written strategy to be provided at Subdivision Certificate stage, and for the continued implementation of this strategy following.</p>	<ol style="list-style-type: none"> <li><i>This condition requires a street tree maintenance strategy (for street tree and the irrigation infrastructure) prior to the issue of subdivision certificate covering a period of 5 years from LRS registration</i></li> <li><i>We request deletion of this condition as they specify that the strategy needs to include measures that ensures that all purchasers, land owners and builders are informed of their obligation to protect the street trees and the irrigation infrastructure, educate them on benefits of street trees etc which we find hard to justify that they are appropriate planning conditions.</i></li> <li><i>Further, we do not believe it is reasonable to impose as a requirement prior to Council issuing a Subdivision Certificate, as it is not a condition that we should be required to satisfy in order to obtain the Sub-Cert.</i></li> <li><i>We have noted to Council previously that for the street trees, we at least have implemented strategies through our sales contract and how we have provided driveway crossings. Through our design guidelines it has also encouraged tree canopy. Regardless, we disagree with the imposition of a condition in a consent.</i></li> <li><i>We also note that we will be maintaining the street trees for 5 years, and as such, maintenance of trees are in our best interests, which should also negate the need for this condition which we see as being superfluous.</i></li> </ol>

	<p>f. As the street tree irrigation was requested by Council and Sydney Water, it is not believed to be reasonable to have the proponent implement a strategy to maintain the street tree irrigation for 5 years. This infrastructure will ultimately be Council's asset to maintain and we have agreed to install it which will be for Council's benefit towards their maintenance regime.</p> <p>g. We believe this condition goes beyond the scope of power to impose and is not appropriate.</p>
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#### Condition 134:

Koala Habitat Protection	
Permanent koala fencing is installed adjacent to koala corridors, <u>unless</u> an agreement with Council has been made on alternative measures.	
<i>Condition reason: Koala protection</i>	
Council Comment	Landcom Comment
Refer to earlier comments	Refer to earlier comments

#### Condition 139:

Street Tree Irrigation Maintenance	
For a period of 5 years from the date of registration of any public roads, the person or entity having the benefit of this consent is liable for the maintenance and rectification of defects that become apparent in the Street Tree Irrigation system infrastructure.	
<i>Condition reason: To ensure support of Street Tree Canopy cover.</i>	
Council Comment	Landcom Comment
<p>The condition supports and is integral to the street tree maintenance (condition 140). Failure of the irrigation infrastructure will impact the health of street trees. Watering is a significant part of the maintenance schedule (for which the applicant is required to undertake for first 5 years), therefore these conditions are considered interdependent. A reduced maintenance period may therefore impact the viability of the street trees but will also have a significant financial impact on Council.</p>	<p>a. Street tree irrigation maintenance is ultimately Council's responsibility as it is part of the road reserve and is an asset that Council required the proponent to implement as an approach to water the street trees. It is noted that it is not the only way to water the street trees. We used water carts with Stage 1, which is the standard approach across subdivision development.</p> <p>b. We have agreed to install the infrastructure despite initial disagreements with Council given we did not believe that it was appropriate as there was an overreliance of a DCP control which only states 'directly connect trees to the recycled water network for irrigation' – this can be interpreted in different ways. We initially offered a standpipe option to implement connected to recycled water so that council could use to water the trees, which could speak to that DCP control. However Council required it to be an automated drip irrigation system (using smart technology) connected to the recycled water network, with Council requiring it to be within all the road verges in the subdivision (which has not been something that has been done elsewhere). We also note Sydney Water's involvement despite the fact that they did not carry any concurrence / approval role in this DA.</p>

	<p>c. Whilst we accepted to install the infrastructure, Council have now imposed that the proponent is to maintain the infrastructure for 5 years (which means us being liable for any maintenance costs involved to maintain this infrastructure including the metering costs for the water), where under normal circumstances, it would be Council's responsibility given it is an asset they requested and will be responsible for, which will feed into their wider irrigation system (which is currently only within the open spaces).</p> <p>d. All Councils have an obligation to maintain the road infrastructure once it gets handed over.</p> <p>e. It is not up to the proponent to mitigate all of Council's maintenance burdens, given the ultimate responsibility of the roads including this infrastructure are with Council. As such the condition is not believed to be fair and reasonable.</p> <p>f. We've requested a 12 month maintenance period instead of 5 years and feel that this is appropriate given we will be installing this infrastructure for Councils benefit in their maintenance regime.</p> <p>g. As with all the relevant conditions, we query where the 5 years comes from – as it does not appear to be implemented in any Council planning policies etc. 5 years for street tree or asset related maintenance (with the exception of raingardens) is not usually observed in consent conditions elsewhere as it goes above and beyond what we believe is fair and reasonable.</p>
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**Condition 140:**

<b>Street Tree Maintenance</b>	
<p>For a period of 5 years from the date of registration of the subdivision, the person or entity having the benefit of this consent is liable for the inspection and maintenance of any street tree or landscaping element within public land. Inspection and Maintenance must include:</p> <ul style="list-style-type: none"> <li>a. Regular watering to ensure establishment of the plant or tree;</li> <li>b. Replacement of any diseased, dead or significantly damaged plant or tree;</li> <li>c. Pruning of street trees to ensure establishment of a suitable tree canopy involving crown lifting for line of sight and clearance for garbage collection and formative pruning to promote good branch structure.</li> </ul>	
<p><i>Condition reason: To ensure street trees are suitable for the road reserve.</i></p>	
Council Comment	Landcom Comment

<p>It is understood that the applicant seeks to remove point a. from the condition.</p> <p>This is not supported as the Applicant is required to undertake regular watering for tree establishment, this in an important aspect of the maintenance schedule. Watering may be done via the street tree irrigation network (supported by condition 139).</p> <p>It is noted that Applicant has elected to place the majority of burden for tree canopy cover within the road reserve. This places an unreasonable maintenance burden on Council to achieve the 40% canopy cover. This burden must be borne by the applicant to fulfil its obligations with respect to meeting the tree canopy controls in the DCP and for the applicant to benefit from the increased lot density and usability.</p> <p>A reduced maintenance period / requirement for Council to provide water irrigation within this period, may therefore impact the viability of the street trees but will also have a significant financial impact on Council.</p>	<p>a. <i>This condition is in contention as it is linked with condition 139.</i></p> <p>b. <i>Whilst Landcom can replace the street trees where required for 5 years, the watering is linked with the drip irrigation.</i></p>
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#### Condition 141:

<p><b>Street Tree Protection</b></p>	
<p>For a period of 5 years from the date of registration of any public roads or land, the person or entity having the benefit of this consent must implement the Street Tree Protection Strategy, as approved by Council. The protection measures outlined in the strategy must be implemented and managed for the 5 year period.</p>	
<p><i>Condition reason: to ensure the obligations for tree canopy cover within the subdivision can be achieved through street tree establishment.</i></p>	
<p>Council Comment</p>	<p>Landcom Comment</p>
<p>Refer to previous comments from Council. The strategy is an attempt to ensure maximum viability for the street trees in the critical first 5 years through mainly an education strategy. This is not considered onerous as Council merely requires the applicant to take reasonable steps to inform all purchasers, land owners and builders of their obligations to protect street trees and the associated irrigation infrastructure. Written evidence of the strategy is required.</p>	<p>a. <i>Linked with condition 1 - we do not feel this is reasonable for Council to require us to implement and manage this strategy for a period of 5 years as part of consent conditions for this development. How is condition enforceable as the strategy requires us to inform all relevant of their obligations to protect street trees and infrastructure and promote and educate on benefit of trees</i></p>