



INNER WEST COUNCIL

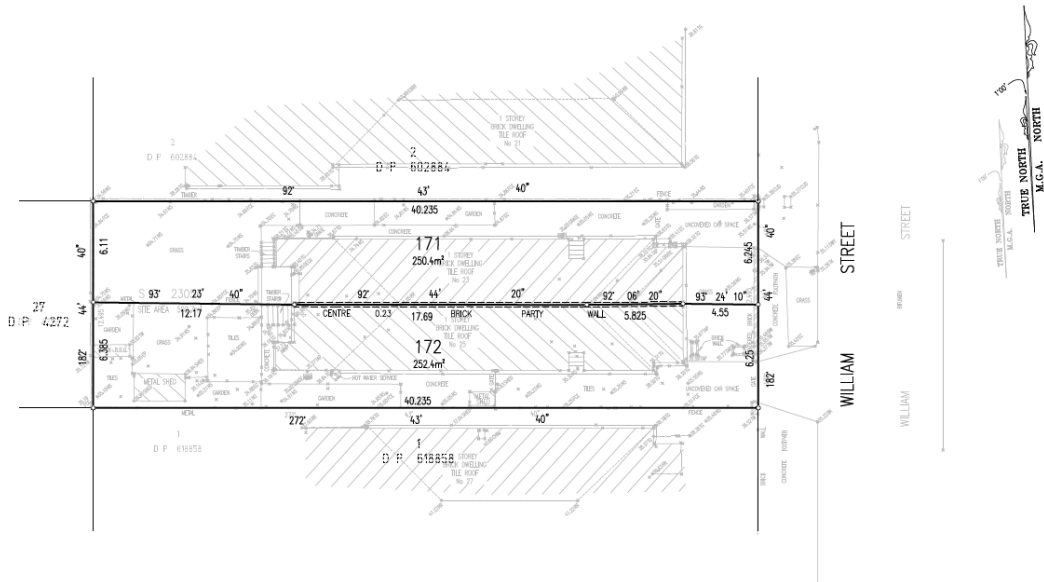
DEVELOPMENT ASSESSMENT REPORT

Application No.	DD010.2018.00000137.001
Address	23 – 25 William Street, Ashfield
Proposal	Torrens Title Subdivision of existing Strata Lots
Date of Lodgement	30 July 2018
Applicant	Giuseppe Cavagnino
Owner	Giuseppe & Catherine Cavagnino & Patricia Jungfer
Number of Submissions	Nil.
Value of works	Nil.
Reason for determination at Planning Panel	Proposed variation to minimum subdivision lot size exceeds 10%, Current Council Employee is owner of one of the properties
Main Issues	Clause 4.6 variation to minimum subdivision lot size
Recommendation	Consent subject to conditions

Location Plan	Legend
	<p>Site</p>
	<p>Objections</p> <p>Neighbouring properties notified</p>
<p>Please note that blue line in map is from mapping tool and also indicates properties that were notified of the proposal.</p>	



Picture 1 Site Photo – William Street frontage



Picture 2 Plan of proposed subdivision

1. Executive Summary

This report concerns an application for Torrens Title Subdivision of an existing Strata Subdivided site at 23 William Street, Ashfield.

The proposal generally complies with aims, objectives and design parameters contained in Ashfield Local Environment Plan 2013 (ALEP 2013) with the exception of a variation to the minimum subdivision lot size. The applicant has submitted a written request under Clause 4.6 exception to the development standards as part of the subject development application, which seeks consent to vary the minimum subdivision lot size standard by 50%. The Clause 4.6 written request is considered to be well founded and worthy of support.

The development generally complies with the provisions of the Inner West Comprehensive Development Control Plan 2016. It is considered that, subject to conditions, the proposal will not result in any significant impacts on the streetscape or amenity of adjoining properties.

2. Proposal

The application seeks approval for Torrens Title subdivision of the existing Strata Subdivided site known as 23 & 25 William Street, Ashfield. The proposal results in the following site dimensions and areas for 23 & 25 William Street:

- 23 William Street – To be registered as Lot 171, results in a site area of 250.4m², a width of 6.2m and a maximum length of 40.2m.
- 25 William Street – To be registered as Lot 172, results in a site area of 252.4m², a width of 6.25m and a maximum length of 40.2m.

The current development application does not propose any building works to occur to either site.

3. Site Description

The subject site is located on the western side of William Street, between Clissold Street to the south and Robert Street to the north. The site is approximately 502.8m square meters. Two existing single storey semi-detached dwellings are located upon the site. Located upon neighbouring sites are also single storey semi-detached dwellings of a similar architectural design, as dwellings along this portion of William Street were constructed at a similar time period.

The subject site is situated within the Mountjoy Heritage Conservation area, which is identified as an area of aesthetic significance and characterised by the streetscapes of single storey dark brickwork detached and semi-detached 1930's and 1940's housing with hipped terracotta tiled roofs, small front gardens and narrow side driveways. The area is considered rare as a 1930's housing subdivision of Victorian villa's grounds where the Victorian villa remains.

4. Background

4(a) Site history

The following application outlines the relevant development history of the subject site and any relevant applications on surrounding properties.

Subject Site

Application	Proposal	Decision & Date
006.1941.9503	Building Application	Approved
006.1974.655	Building Application	Approved
006.1968.6960	Building Application	Approved – 11/10/1968
006.1968.6658	Building Application	Approved – 12/2/1968

4(b) Application history

The following table outlines the relevant history of the subject application.

Date	Discussion / Letter/ Additional Information
24/9/2018	Council requested that the applicant submit a comprehensive Clause 4.6 request to the minimum subdivision lot size control and additional information regarding the sites existing stormwater drainage pipe system.
15/10/2018	The requested Clause 4.6 request and information regarding the stormwater drainage pipe system was submitted to Council.

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 79C of the Environmental Planning and Assessment Act 1979.

5(a) Environmental Planning Instruments

The following is a summary of the assessment of the application in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979.

The application has been assessed against the relevant Environmental Planning Instruments listed below:

- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Ashfield Local Environmental Plan 2013

The following provides further discussion of the relevant issues:

5(a)(i) State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. LDCP 2013 provides controls and guidelines for remediation works. SEPP 55 requires that remediation works must be carried out in accordance with a Remediation Action Plan (RAP) as approved by the consent authority and any guidelines enforced under the Contaminated Land Management Act 1997. The site has not been used in the past for activities which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with SEPP 55.

5(a)(ii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

An assessment has been made of the matters set out in Clause 20 of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. It is considered that the carrying out of the proposed development is generally consistent with the objectives of the Plan and would not have an adverse effect on environmental heritage, the visual environmental, the natural environment and open space and recreation facilities.

5(a)(iii) Ashfield Local Environment Plan 2013 (ALEP 2013)

The application was assessed against the following relevant clauses of the Ashfield Local Environmental Plan 2013:

Ashfield Local Environmental Plan 2013				
Summary Compliance Table				
Clause No.	Clause	Standard	Proposed	Compliance
2.2	Zoning	R2 Low Density Residential	Torrens Title Subdivision	Yes
4.1	Minimum subdivision lot size	500m ²	23 William Street to result in a lot area of 250.4m ² 25 William Street to result in a lot area of 252.4m ²	No - 50% variation No – 49.5% variation.
4.3	Height of buildings	8.5m	Existing	No change from existing
4.4	Floor space ratio	0.5:1	Existing	No change from existing
4.6	Exception to development standards	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	The applicant has submitted a written request to vary the development standard for minimum lot size. This request is assessed below.	Yes
5.10	Heritage Conservation	Mountjoy Heritage Conservation area		
5.10(4)	Effect of proposed development on heritage significance	The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or the area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage	The proposed subdivision has been assessed and is unlikely to impact upon the heritage significance of the locality. Analysis of adjoining sites has highlighted a similar	Yes

		conservation management plan is submitted under subclause (6).	pattern of subdivision. The current application seeks to align with this existing pattern.	
5.10(5)	Heritage assessment	<p>The consent authority may, before granting consent to any development:</p> <p>(a) On land on which heritage item is located, or</p> <p>(b) On land that is within a heritage conservation area, or</p> <p>(c) On land that is within the vicinity of land referred to in paragraph (a) or (b),</p> <p>Require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</p>	The proposed works are unlikely to impact upon the significance of the conservation area	Yes

The following provides further discussion of the relevant issues:

Clause 4.6 Exceptions to Development Standards

The development results in lot sizes of 250.4m² and 252.4m² and therefore does not meet the minimum subdivision lot size of 500m² of the development standard prescribed under clause 4.1 of the ALEP 2013.

Under Clause 4.6 development consent must not be granted for a development that contravenes a development standard unless the consent authority has considered a written request from the applicant that demonstrates:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify contravening the development standard.

The consent authority must also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The applicant seeks to vary the minimum subdivision lot size development standard of 500m² by 249.6m² and 247.6m² or 50% and 49.5% respectively.

A written request in relation to the contravention to the height development standard in accordance with Clause 4.6 (Exceptions to Development Standards) of ALEP 2013 was submitted with the application. In summary the applicant’s written request justifies the non-compliance on the basis that:

- *Importantly in this particular circumstance, at present all of the other semi-detached dwellings in William Street have already been subdivided, and have the same or similar size/dimensions as that proposed by this DA. In other words, the proposed subdivision will bring the subject site in line with the historic residential subdivision pattern in William Street.*
- *The proposed subdivision would not alter the physical relationship of the approved development with the surrounding low-density residential environment. Would not detract from the residential character of the area given the proposal does not alter the existing dwelling- houses.*
- *Importantly, as is the case with all of the other semi-detached homes in the street, the Strata at 23-25 William Street have no common area, the driveways and front entrance are completely separate/private, and the roof cavity is bricked to the tiled roof.*
- *The objectives of the development standard clearly is to ensure consistent lot sizes in terms of sizes & dimensions to preserve streetscape continuity, and to mitigate against undesirable amenity impacts to surrounding residential properties. Accordingly, as indicated in the SEE submitted with the DA, the proposal will not result in any changes to the pre-existing material/physical site conditions by way of overshadowing, visual and acoustic privacy, view loss and visual massing to adjoining properties and the public domain.*

The justification provided in the applicant's written request is considered well founded and worthy of support. Considering the above justification, strict compliance with the development standard is considered unreasonable and unnecessary given the circumstances of the site.

The minimum subdivision lot size development standard was introduced to ensure that development maintains the existing pattern of subdivision within heritage conservation areas in terms of lot size and lot dimensions and provide opportunities for infill small lot subdivision in areas close to transport and amenities in a manner that does not adversely impact on the streetscape or amenity of residential areas.

In this instance the applicant has adequately demonstrated that the proposal continues on the established pattern of subdivision within the Mountjoy heritage conservation area, with the proposed subdivision pattern aligning with that of other semi-detached dwellings. Acceptance of the proposed subdivision results in no further amenity impacts for neighbouring residents for the heritage conservation area as the proposal does not seek consent for any building work.

The proposal continues the pattern of established subdivision for the locality, ensuring the proposal is more in line with the significance of the conservation area, while also ensuring the subdivision pattern will not be out of character for the locality. The proposed development is considered to be consistent with both the objectives of the zone and the objectives of the development standard.

The contravention of the development standard does not raise any matter of significance for State and Regional environmental planning, and there is no public benefit in maintaining strict compliance with the standard.

5(b) Draft Environmental Planning Instruments

Draft Environment SEPP (Environmental)

The NSW government has been working towards developing a new State Environmental Planning Policy (SEPP) for the protection and management of our natural environment. The Explanation of Intended Effect (EIE) for the Environment SEPP was on exhibition from 31 October 2017 until the 31 January 2018. The EIE outlines changes to occur, implementation details, and the intended outcome. It considers the existing SEPPs proposed to be repealed and explains why certain provisions will be transferred directly to the new SEPP, amended and transferred, or repealed due to overlaps with other areas of the NSW planning system.

This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland and Willandra Lakes World Heritage Property. Changes proposed include consolidating the seven existing SEPPs including Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The proposed development would be consistent with the intended requirements within the Draft Environment SEPP.

5(c) Development Control Plans

DCP 2016 – Chapter A: Miscellaneous – Part 9 Subdivision				
Control No.	Control	Standard	Proposed	Compliance
DS 1.1	General	Minimum lot size complies with the Ashfield LEP	The proposal does not comply with the ALEP 2013.	No – See assessment above
DS 2.1	Site Characteristics	No design solution, assessed on merit.	Proposed subdivision has been designed to protect significant features of the site	Yes
DS 3.1	Density	No design solution, assessed on merit.	The proposed subdivision will not result in a density that will burden the capacity of infrastructure	Yes
DS 4.1	Character	No design solution, assessed on merit.	The subdivision is consistent with that of the prevailing lot pattern and streetscape	Yes
DS 5.1	Small Lot Torrens Title	A development application that involves Small Lot Torrens Title Subdivision is supported by a Building Envelope Plan that shows: <ul style="list-style-type: none"> the potential dwelling, including any ancillary buildings and structures such as pools, garages and other outbuildings vehicle access, parking and manoeuvring areas 	The subject site already has two dwelling houses located upon the site, the dwelling houses are independent from one another with separate driveways, entries and no common open space	Yes
DS 5.2		Battle-axe lots are not created	Subdivision does not result in battle axe block	Yes

5(d) The Likely Impacts

The assessment of the Development Application demonstrates that, subject to the recommended conditions, the proposal will have minimal impact in the locality.

5(e) The suitability of the site for the development

The site is zoned R2 Low Density Residential. Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

5(f) Any submissions

The application was notified in accordance with the Inner West Comprehensive Development Control Plan 2016 for a period of 14 days to surrounding properties. No submissions were received.

5(g) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

6 Referrals

6(a) Internal

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in section 5 above.

- Development Engineer – The proposal was referred to Council's Development Assessment Engineer who requested additional information regarding the existing stormwater management system. This information was provided and Council's Development Assessment Engineer outlined no objection to the proposal, subject to suitable conditions of consent.
- Building Surveyor – Council's Building Surveyor has undertaken a review of the proposal and outlined no objection to the development. Council's Building Surveyor has outlined that a masonry wall extends to the underside of the tile roof resulting in acceptable fire separation.

7. Section 94 Contributions

Section 7.12 Contributions are not payable for the proposal.

The proposal seeks consent for the Torrens Title subdivision of an existing strata subdivided lot. The development application proposes no building works and does not increase demand for the area, as both of the proposed lots already contain an operational dwelling.

In accordance with the former Ashfield Council area – Section 94 Contributions plan, page 10 which discusses allowances for existing development, the applicant is permitted to gain an allowance against contributions payable, if information is provided with the development application which demonstrates existing lawful population on the site of the development. A review of Council records has highlighted that the existing dwelling houses were approved by Council and are lawful. The applicant has adequately demonstrated that each of these dwelling houses contain a lawful population.

As such it is recommended that no section 7.12 contributions be levied against the development.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in Ashfield Local Environmental Plan 2013 and Comprehensive Inner West Development Control Plan 2016. The development will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The application is considered suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6(3) of the LEP in support of the contravention of the development standard for 4.1 minimum subdivision lot size. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds, the proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority pursuant to s80 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No: 10.2018.137 for Torrens title subdivision at 23 William Street subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

A General Conditions

(1) Approved plans stamped by Council

The development must be carried out only in accordance with the plans and specifications set out on drawing numbers

No.	Issue	Title	Prepared by	Dated
200319 Sub	1	Plan of proposed subdivision	Mitchell Kieth Ayres	12/4/2018

and any supporting documentation received with the application, except as amended by the conditions specified hereunder.

B Design Changes

nil

C Conditions that must be satisfied prior to issuing/releasing of a Subdivision Certificate

(1) Subdivision certificate to be obtained from Council

A subdivision certificate, being a certificate that authorises the registration of a plan of subdivision under Division 3 of Part 23 of the Conveyancing Act 1919 is to be obtained from Council in accordance with Section 109C(1)D of the *Environmental Planning and Assessment Act 1979*.

(2) Plan of subdivision - Council signature

A final plan of subdivision, prepared by a registered surveyor, and six (6) paper copies, are to be submitted to Council for signature, prior to registration at the Land Titles Office.

(3) Sydney Water - Section 73 Compliance Certificate

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 "Your Business" section of the web site www.sydneywater.com.au then follow the "e-Developer" icon or telephone Sydney Water 13 20 92 for assistance.

Following application, a "Notice of Requirements" will advise of water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions 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 the release of an occupation or subdivision certificate.

(4) Easement to Drain Water

An Easement to Drain Water, 2.5m wide, shall be dedicated to the Inner West Council over the existing stormwater line that passes across both No's 23 and 25, toward the rear of the properties.

The Plan and Instrument for the Easement dedication shall be lodged with Council for consideration and approval, PRIOR to lodging the Subdivision Plan & Instrument with the NSW Land Registry Services.

The existing stormwater line shall be excavated at the three side boundaries, by the Applicant, to ascertain its exact position and the position surveyed by a Registered Surveyor.

With the lodgement to Council, of the Plan of Subdivision and Easement Instrument, a written statement shall be included, from the Registered Surveyor, stating that the existing stormwater line is positioned centrally within the proposed Easement.

This process and dedication shall be at the Applicant's full cost.

(5) Subdivision Certificate issue requirements

A subdivision certificate will not be issued until:

- The Section 94 contributions and relevant fees and bonds are paid.
- Certification and documentation has been provided from a suitably qualified structural engineer detailing that the existing party wall extends to the underside of the existing roof
- Documentation from a suitably qualified professional certifying that the existing dwellings are compliant with the requirements for fire separation
- Certification from a suitably qualified professional that each dwellings services are independent from one another
- Condition 4 above has been satisfied and appropriate documentation detailing satisfaction has been provided

D Conditions that must be complied with before work commences

nil

E Conditions that must be complied with during construction or demolition

nil

F Conditions that must be complied with prior to installation of services

nil

G Conditions that must be complied with before the building is occupied

nil

H **Conditions that are ongoing requirements of development consents**

nil

I **Advisory Notes****(1) Other approvals**

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, including:

- an Application for Approval under Section 68 of the *Local Government Act 1993* for any proposed activity under that Act, including any erection of a hoarding. All such applications must comply with the *Building Code of Australia*.
- an Application for Approval under Section 68 of the *Local Government Act 1993* for a Place of Public Entertainment if proposed. Further building work may also be required for this use in order to comply with the *Building Code of Australia*. If there is any doubt as to what constitutes “Public Entertainment” do not hesitate to contact Council’s Fire Officer.
- an application for an Occupation Certificate under Section 109(C)(2) of the *Environmental Planning and Assessment Act 1979*.

Note: An application for an Occupation Certificate may be lodged with Council if the applicant has nominated Council as the Principal Certifying Authority.

- an Application for a Subdivision Certificate under Section 109(C)(1)(d) of the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed.
- an Application for Strata Title Subdivision under the *Strata Schemes (Freehold Development) Act 1973*, if strata title subdivision of the development is proposed.
- a development application for demolition approval under the *Environmental Planning and Assessment Act 1979* if consent for demolition is not granted by this consent.

(2) Modifications to your consent - prior approval required

Works or activities other than those authorised by the approval including changes to building configuration or use will require the submission and approval of an application to modify the consent under Section 96 of the *Environmental Planning & Assessment Act 1979*. You are advised to contact Council immediately if you wish to alter your approved plans or if you cannot comply with other requirements of your consent to confirm whether a Section 96 modification is required.

Warning: There are substantial penalties prescribed under the *Environmental Planning and Assessment Act 1979* for breaches involving unauthorised works or activities.

(3) Occupational health and safety

All site works must comply with the occupational health and safety requirements of the NSW Work Cover Authority.

(4) Bulk bins on footpath and roadway

Approval is required from Council prior to the placement of any bulk bins on Council's footpath and/or roadway.

(5) Tree preservation

Where tree removal or work has not been approved by this Development Consent, the developer is notified that a general Tree Preservation Order applies to all trees (with the exception of certain species) in the Inner West Council area with a height greater than five (5) metres. This order prohibits the ringbarking, cutting down, topping, lopping*, pruning, transplanting, injuring or wilful destruction of such trees except with the prior approval of the Council. Written consent from Council for such tree works must be in the form of a "Tree Preservation Order Permit for Pruning or Removal of Protected Trees" to be obtained from Council.

- * Lopping may be carried out without consent only to maintain a minimum clearance of 500mm from power lines, pruning to remove dead wood/branches and minor pruning of branches overhanging buildings to a height of 2 metres only with the agreement of the owner of the tree. Contact Council's Customer Service Centre - telephone 9392 5000, for details of the Tree Preservation Order.

Attachment B – Plans of proposed development

<p>PLAN FORM 6 (2017)</p>	<p>DEPOSITED PLAN ADMINISTRATION SHEET</p>	<p>Sheet 1 of 3 sheet(s)</p>
<p>Registered: Title System:</p>	<p>DRAFT PRINTED 12 APR 2018 ISSUE 1</p>	
<p>PLAN OF PROPOSED SUBDIVISION LOT 17 IN DP 4272 (LOTS 1, 2 AND COMMON PROPOERTY IN SP 23054)</p>	<p>LGA: INNER WEST Locality: ASHFIELD Parish: PETERSHAM County: CUMBERLAND</p>	
<p style="text-align: center;">Survey Certificate</p> <p>I, MITCHELL KIETH AYRES of Veris Australia Pty Ltd Suite 301 Level 3 55 Holt St Surry Hills NSW 2010 a surveyor registered under the <i>Surveying and Spatial Information Act 2002</i>, certify that</p> <p>*(a) The land shown in the plan was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2017</i>, is accurate and the survey was completed on:or</p> <p>*(b) The part of the land shown in the plan (*being/*excluding**.....) was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2017</i>, the part surveyed is accurate and the survey was completed on, the part not surveyed was compiled in accordance with that Regulation, or</p> <p>*(c) The land shown in this plan was compiled in accordance with the <i>Surveying and Spatial Information Regulation 2017</i>.</p> <p>Datum Line:</p> <p>Type: *Urban/*Rural</p> <p>The terrain is *Level-Undulating / *Steep-Mountainous.</p> <p>Signature: Dated:</p> <p>Surveyor Identification No: 8674 Surveyor registered under the <i>Surveying and Spatial Information Act 2002</i></p> <p>*Strike through if inapplicable. *Specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey.</p>	<p style="text-align: center;">Crown Lands NSW/Western Lands Office Approval</p> <p>I..... (Authorised Officer) in approving this plan certify that all necessary approvals in regard to the allocation of the land shown herein have been given.</p> <p>Signature:</p> <p>Date:</p> <p>File Number:</p> <p>Office:</p> <hr/> <p style="text-align: center;">Subdivision Certificate</p> <p>I..... *Authorised Person/*General Manager/*accredited Certifier, certify that the provisions of s.109J of the <i>Environmental Planning and Assessment Act 1979</i> have been satisfied in relation to the proposed subdivision, new road or reserve set out herein.</p> <p>Signature:</p> <p>Accreditation number:</p> <p>Consent/Authority:</p> <p>Date of Endorsement:</p> <p>Subdivision Certificate no:</p> <p>File number:</p> <p>*Strike through if inapplicable</p>	
<p>Plans used in the preparation of survey/compilation</p> <p>DP 4272 SP 23054</p>	<p>STATEMENTS of intention to dedicate public roads, public reserves and drainage easements, acquire/resume land.</p> <p style="text-align: center;">If space is insufficient continue on PLAN FORM 6A</p>	
<p>Surveyor's Reference: 200319 SUB</p>	<p>Signatures, Seals and Section 88B Statements should appear on PLAN FORM 6A</p>	

X:\00ALL VERIS JOBS\200000-200500\200319 23-25 WILLIAM ST ASHFIELD\200319-SUB\200319 SUB ADMIN SHT01.DWG

PLAN FORM 6A (2017)	DEPOSITED PLAN ADMINISTRATION SHEET	Sheet 2 of 3 sheet(s)
<div style="text-align: right; font-size: small; margin-bottom: 5px;">Office Use Only</div> Registered: PLAN OF PROPOSED SUBDIVISION LOT 17 IN DP 4272 (LOTS 1, 2 AND COMMON PROPOERTY IN SP 23054)	<div style="text-align: right; font-size: small; margin-bottom: 5px;">Office Use Only</div> <div style="text-align: center; font-size: large; font-weight: bold; margin-bottom: 10px;">DRAFT</div> <div style="text-align: center; font-size: large; font-weight: bold; margin-bottom: 10px;">PRINTED 12 APR 2018</div> <div style="text-align: center; font-size: large; font-weight: bold; margin-bottom: 10px;">ISSUE 1</div> <div style="font-size: small;"> This sheet is for the provision of the following information as required: <ul style="list-style-type: none"> A schedule of lots and addresses - See 60(c) SSI Regulation 2017 Statements of intention to create and release affecting interests in accordance with section 88B Conveyancing Act 1919 Signatures and seals - see 195D Conveyancing Act 1919 Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets. </div>	<div style="text-align: right; font-size: small; margin-bottom: 5px;">Office Use Only</div> Subdivision Certificate No: Date of Endorsement:
If space is insufficient use additional annexure sheet		
SURVEYORS REFERENCE: 200319 SUB		

X:\00ALL VERIS JOBS\200000-200500\200319 23-25 WILLIAM ST ASHFIELD\200319-SUB\200319 SUB ADMIN SHT02.DWG

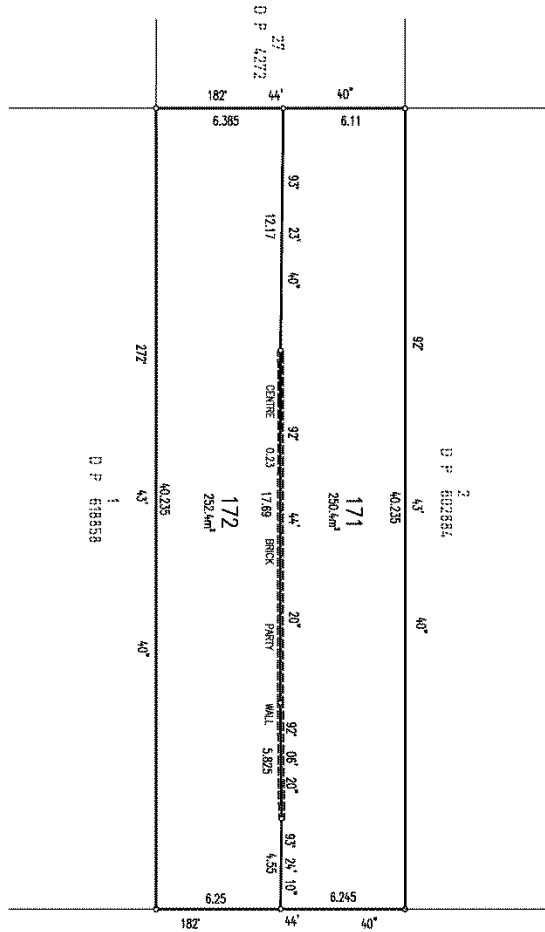
PLAN FORM 6A (2017)	DEPOSITED PLAN ADMINISTRATION SHEET	Sheet 3 of 3 sheet(s)
<div style="text-align: right; font-size: small; margin-bottom: 5px;">Office Use Only</div> Registered: PLAN OF PROPOSED SUBDIVISION LOT 17 IN DP 4272 (LOTS 1, 2 AND COMMON PROPOERTY IN SP 23054)	<div style="text-align: right; font-size: small; margin-bottom: 5px;">Office Use Only</div> <div style="text-align: center; font-size: large; font-weight: bold; margin-bottom: 10px;"> DRAFT PRINTED 12 APR 2018 ISSUE 1 </div> <div style="font-size: x-small;"> This sheet is for the provision of the following information as required: <ul style="list-style-type: none"> A schedule of lots and addresses - See 60(c) SSI Regulation 2017 Statements of intention to create and release affecting interests in accordance with section 88B Conveyancing Act 1919 Signatures and seals - see 195D Conveyancing Act 1919 Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets. </div>	<div style="text-align: right; font-size: small; margin-bottom: 5px;">Office Use Only</div> Subdivision Certificate No: Date of Endorsement:
<p style="text-align: center; font-size: small;">If space is insufficient use additional annexure sheet</p>		
SURVEYORS REFERENCE: 200319 SUB		

X:\00ALL VERIS JOBS\200000-200500\200319 23-25 WILLIAM ST ASHFIELD\200319-SUB\200319 SUB ADMIN SHT03.DWG

PLAN FORM 2 (A2)

WARNING: CHANGING OR FOLDING WILL LEAD TO REJECTION

Sheet No. 1 of 1 Sheets



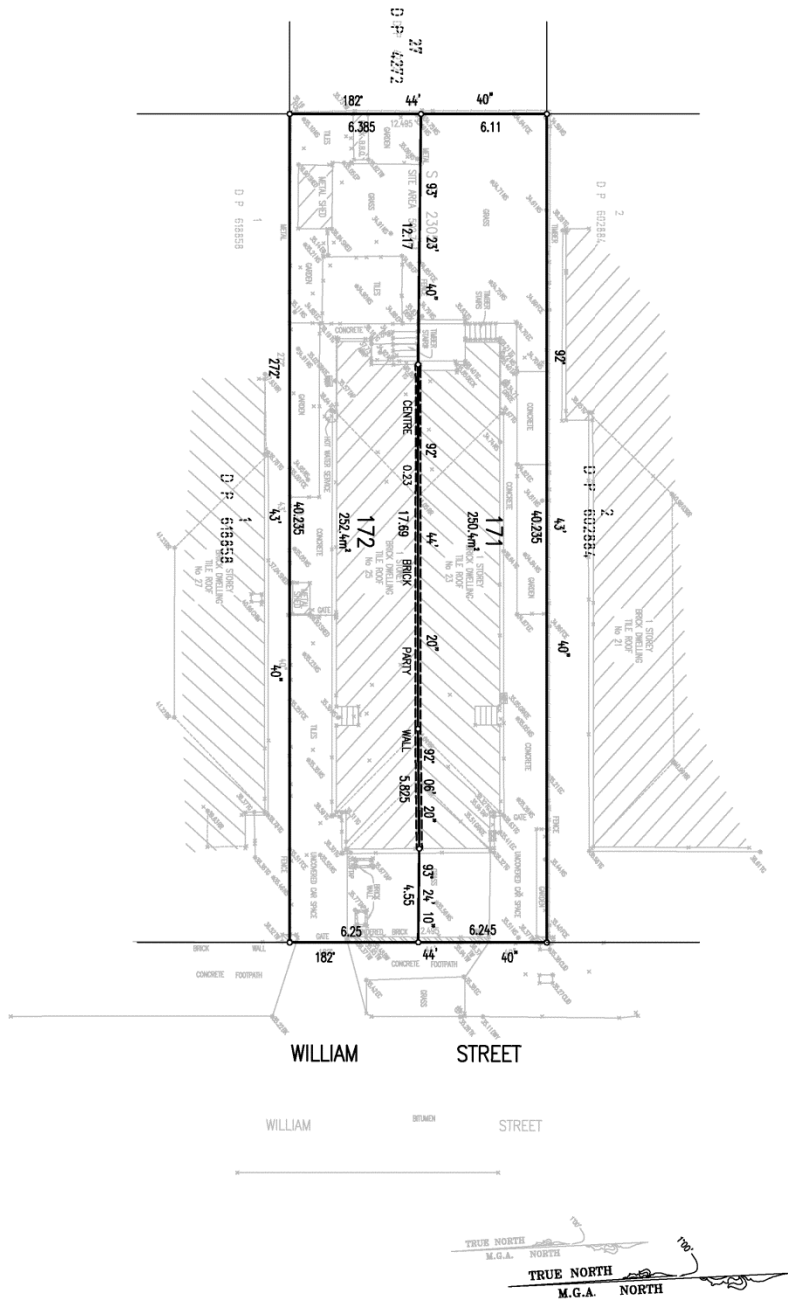
SURVEYOR Name: MITCHELL KEITH AMES Date: Reference: 200319 SUB		PLAN OF PROPOSED SUBDIVISION LOT 17 IN DP 4272 (LOTS 1, 2 AND COMMON PROPERTY IN SP 23054)		LGA: INNER WEST Locality: ASHFIELD Reduction Ratio: 1:150 Lengths are in metres.		REGISTERED CONTRACTOR PLAN This is subject to final approval of the relevant authority and does not constitute an offer of construction.		PRINTED DRAFT 12 APR 2018 ISSUE 1	
---	--	--	--	---	--	--	--	---	--

X:\LOCAL\VENIS\JOHN\23054-23054\200319 SUB\19-23-25 WILLIAM ST ASHFIELD\200319 SUB SHPT01.dwg

0mm 20 30 40 50 60 70 80 90 100 110 120 130 140 150 Scale of mm

SUPERVISOR Name: MITCHELL KEITH AYLES Date: Reference: 200319 SUB	PLAN OF PROPOSED SUBDIVISION LOT 1/7 IN DP 4272 (LOTS 1, 2 AND COMMON PROP-DEVTY IN SP 23054)	LOK: Locality: INNER WEST ASHFIELD Reduction Ratio: 1:150 Lengths are in metres.	REGISTERED CONTRACT PLAN From is subject to final construction and other requirements of the Act of construction.	PRINTED 12 APR 2018 ISSUE 1 DRAFT
--	--	---	--	--

K:\LOCAL VENS JOSBY\200000-200950\200319 23-25 WILLIAM ST ASHFIELD\200319 SUB\200319 SUB SHOT1.dwg



Attachment C – Clause 4.6 exception



2 October 2018
General Manager
Inner West (Ashfield) Council

Dear Sir / Madam,

The applicant has engaged TranPlan Consulting to provide this submission seeking variation to Clause 4.1(3) of the Ashfield Local Environmental Plan 2013, which relates to “*Minimum subdivision lot sizes*” (Clause 4.1(3)).

This submission has been prepared in relation to a Development Application (DA **2018.137**) for the proposed Torrens title subdivision of 2 existing dwellings (Strata Lot SP23054) on land known as 23-25 William Street, Ashfield.

As detailed in this written request for a variation to the Clause 4.1(3) development standard under the Ashfield LEP 2013, the proposed development variation meets the requirements prescribed under Clause 4.6 of the Ashfield LEP 2013.

1 CLAUSE 4.6 VARIATION TO CLAUSE 4.1(3) OF THE ASHFIELD LOCAL ENVIRONMENTAL PLAN 2013

This submission is made under Clause 4.6 of the Ashfield Local Environmental Plan 2013 – Exceptions to development standards. Clause 4.6 establishes the framework for varying development standards applying under a Local Environmental Plan. Clause 4.6 states the following:

4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

1



- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- Note.** When this Plan was made it did not include all of these zones.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4,
 - (ca) clause 4.4, to the extent that it applies to land in Zone B4 Mixed Use that has a maximum floor space ratio of 3:1,
 - (cb) clause 4.4A.

Specifically, subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

2



4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

(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

A key consideration is that the fundamental purpose/objective of Clause 4.6 is to provide flexibility in applying development standards in that in so doing better development outcomes ensue.

1.1 CLAUSE 4.1(3) OF THE ASHFIELD LEP 2013

The Environmental Planning Instrument to which this variation relates to is Ashfield LEP 2013, and the development standard is Clause 4.1(3) of the Ashfield LEP 2013, which reads as follows:

4.1 Minimum subdivision lot size

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

- (a) to maintain the existing pattern of subdivision within heritage conservation areas in terms of lot size and lot dimensions,
- (b) to provide opportunities for infill small lot subdivision in areas close to transport and amenities in a manner that does not adversely impact on the streetscape or amenity of residential areas,
- (c) to provide for small lot subdivision in certain areas close to public transport as an alternative to redevelopment for the purpose of multi dwelling housing in order to retain the scale and character of the area,
- (d) to ensure that lot sizes allow development to be sited to protect and enhance riparian land.

(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

(4) This clause does not apply in relation to the subdivision of any land:

- (a) by the registration of a strata plan or strata plan of subdivision under the [Strata Schemes Development Act 2013](#), or
 - (b) by any kind of subdivision under the [Community Land Development Act 1989](#).
- (4A) For the purpose of calculating the size of a battle-axe lot, the area of the access handle is excluded.

The minimum required lot frontage and minimum required lot size for any lot resulting from a subdivision of land is 500m².

2 EXTENT OF NON-COMPLIANCE

The development site has an area of 502.8m² which fall short of the minimum subdivision lot size requirement, by approximately 50%.

3



It is worth noting that there is no restriction on the percentage of variation that can be supported by Councils and/or the NSW Land and Environment Court e.g. in the case of *Moskovich v Waverley Council (2016) NSWLEC 1015*, the Court approved a proposed FSR of 1.5:1 where the control was 0.9:1, or a 65% exceedance!

The proposed variation from the development standard is assessed against the accepted "5 Part Test" for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827* and and the principles outlined in *Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46*.

3 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

The NSW Land and Environment Court (LEC) in *Four2Five Pty Ltd v Ashfield Council [2013] NSWLEC 90*, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council [2007] NSW LEC 827*.

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Chief Justice Preston expressed the view that there are five (5) different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. This attributes to determining whether compliance with the standard is unreasonable or unnecessary in the circumstances of the case as set out on the following Table:

<p>First</p>	<p>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</p> <p>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective,</p>
<p>Second</p>	<p>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.</p>
<p>Third</p>	<p>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.</p>





Fourth	A fourth way is to establish that 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.
Fifth	A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary."

The following discussion is provided in response to each point of the above Table:

3.1 THE OBJECTIVES OF THE STANDARD ARE ACHIEVED NOTWITHSTANDING NON-COMPLIANCE WITH THE STANDARD

The objectives supporting the Clause 4.1(3) development standard identified in Clause 4.1A(1) are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with Clause 4.1(3) would be both unreasonable and unnecessary in this instance. The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.1A.

The development as proposed is consistent with the objectives of the development standard, which are as follows:

- (1) *The objectives of this clause are as follows:*
 - (a) *to maintain the existing pattern of subdivision within heritage conservation areas in terms of lot size and lot dimensions,*
 - (b) *to provide opportunities for infill small lot subdivision in areas close to transport and amenities in a manner that does not adversely impact on the streetscape or amenity of residential areas,*
 - (c) *to provide for small lot subdivision in certain areas close to public transport as an alternative to redevelopment for the purpose of multi dwelling housing in order to retain the scale and character of the area,*
 - (d) *to ensure that lot sizes allow development to be sited to protect and enhance riparian land.*

The objectives of the development standard clearly is to ensure consistent lot sizes in terms of sizes & dimensions to preserve streetscape continuity and conservation of historic subdivision patterns and heritage character, and to mitigate against undesirable amenity impacts to surrounding residential properties.

The development site has an area of 502.8m² which fall short of the minimum subdivision lot size requirement, by approximately 50%. As mentioned previously, in the case of *Moskovich v Waverley Council (2016) NSWLEC 1015*, despite the significant 65% variation, the LEC accepted that compliance with the standard (FSR in that case) was unreasonable and unnecessary because the design achieved the

5



objectives of the standard and the respective zone, in a way that addressed the particular circumstances of the site.

It is assumed that the existing development is otherwise compliant with the core building envelope controls e.g. floor space ratio and building height, and maintains adequate setbacks, site coverage, landscaping etc. Notwithstanding the above, the proposed subdivision is solely to change the title of the land on paper, and there are no physical construction / building works proposed/required.

Accordingly, as indicated in the SEE submitted with the DA, the proposal will not result in any changes to the pre-existing material/physical site conditions by way of overshadowing, visual and acoustic privacy, view loss and visual massing to adjoining properties and the public domain.

Importantly in this particular circumstance, at present all of the other semi-detached dwellings in William Street have already been subdivided, and have the same or similar size/dimensions as that proposed by this DA. In other words, the proposed subdivision will bring the subject site in line with the historic residential subdivision pattern in William Street.

The proposed subdivision would not alter the physical relationship of the approved development with the surrounding low-density residential environment. Would not detract from the residential character of the area given the proposal does not alter the existing dwelling-houses and would not result in a undesirable precedent given the unique circumstances of the case i.e. the prevalent subdivision pattern in the street.

If the planned density for the site can be maintained (building envelope, setbacks, FSR, height) in a way which provides a better planning outcome for the site by the removal of this subdivision "anomaly" and enhance consistency for the historic residential area (the site is located within the Mountjoy Estate Conservation Area), notwithstanding the variation which is within the ambit of Clause 4.6, this is considered to be a positive outcome.

Overall, given the site's location and context it is considered that the site is well suited for the proposed development, and that, as demonstrated, the objectives of the standard have been achieved.

3.2 THE UNDERLYING OBJECTIVE OR THE PURPOSE OF THE STANDARD IS NOT RELEVANT TO THE DEVELOPMENT AND THEREFORE COMPLIANCE IS UNNECESSARY

The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined as above.

3.3 THE UNDERLYING OBJECT OR PURPOSE WOULD BE DEFEATED OR THWARTED IF COMPLIANCE WAS REQUIRED AND THEREFORE COMPLIANCE IS UNREASONABLE

Not applicable as the underlying objective or purpose would not be defeated or thwarted if compliance was required.

6



3.4 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; AND

It cannot be said that this development standard has been abandoned, however there are numerous precedents of approved developments that did not comply with the minimum qualifying lot size elsewhere in the LGA. Some examples are noted below:

- DA10.2015.64 at 8 Federal Avenue, Ashfield. Council approved subdivision of existing semi-detached dwelling built in 1940. Justification was "Consistent with the established subdivision pattern within the area. Proposed size of each lot was 230.8m² (54% variation).
- DA10.2014.165 at 21 Church Street, Ashfield. Council approved subdivision of existing semi-detached dwelling. Justification was "The dwelling are semi-detached and are in existence prior to the adoption of the LEP 2013. Proposed size of each lot was 188m² (63% variation).
- DA10.2010.141 at 11 Lucy Street, Ashfield. Council approved subdivision of existing semi-detached dwelling. Proposed size of each lot was 336.6m² & 346.3m².
- DA10.2010.002 at 27 Lucy Street, Ashfield. Council approved subdivision of existing semi-detached dwelling. Proposed size of each lot was 199.3m² & 192.5m² (62% variation).

3.5 THE ZONING OF THE LAND IS UNREASONABLE OR INAPPROPRIATE SO THAT A DEVELOPMENT STANDARD APPROPRIATE FOR THAT ZONING IS ALSO UNREASONABLE AND UNNECESSARY AS IT APPLIES TO THE LAND AND COMPLIANCE WITH THE STANDARD WOULD BE UNREASONABLE OR UNNECESSARY. THAT IS, THE PARTICULAR PARCEL OF LAND SHOULD NOT HAVE BEEN INCLUDED IN THE PARTICULAR ZONE.

Not applicable as the zoning of the site is appropriate.

4 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In the circumstances of this case, there are sufficient planning grounds particular to the site to justify contravening the development standard being:

- Large variations are fairly standard when there is sound planning rationale e.g. in the case of *Moskovich v Waverley Council (2016) NSWLEC 1015*, despite the significant 65% variation, the LEC accepted that compliance with the standard (FSR in that case) was unreasonable and unnecessary because the design achieved the objectives of the standard and the respective zone, in a way that addressed the particular circumstances of the site.

As indicated previously, there are numerous precedents of approved developments (including some with similar or larger variations) that did not comply with the minimum qualifying subdivision lot size elsewhere in the LGA.

7



- Importantly in this particular circumstance, at present all the semi-detached dwellings in William Street have already been subdivided, and have the same or similar size/dimensions as that proposed by this DA. In other words, the proposed subdivision will bring the subject site in line with the historic residential subdivision pattern in William Street.
- It is assumed that the existing development is otherwise compliant with other core building envelope controls e.g. floor space ratio and building height, and maintains adequate setbacks, site coverage, landscaping etc.

If the planned density for the site can be maintained (building envelope, setbacks, FSR, height) in a way which provides a better planning outcome for the site by the removal of this subdivision “anomaly” and enhance consistency for the historic residential area (the site is located within the Mountjoy Estate Conservation Area), notwithstanding the variation which is within the ambit of Clause 4.6, this is considered to be a positive outcome.

- Notwithstanding the above, the proposed subdivision is solely to change the title of the land on paper, and there are no physical construction / building works proposed/required.

The proposed subdivision would not alter the physical relationship of the approved development with the surrounding low-density residential environment, would not detract from the residential character of the area, and would not result in a undesirable precedent given the unique circumstances of the case i.e. given the prevalent subdivision pattern in the street.

Accordingly, as indicated in the SEE submitted with the DA, the proposal will not result in any changes to the pre-existing material/physical site conditions by way of overshadowing, visual and acoustic privacy, view loss and visual massing to adjoining properties and the public domain.

- Following recent changes to the Strata Titles Act, the Strata Scheme has become administratively unwieldy and excessively costly i.e. the new requirements of the amended Act impose a burden that is designed for large Strata's with many more titles and common property areas.

Importantly, as is the case with all of the other semi-detached homes in the street, the Strata at 23-25 William Street have no common area, the driveways and front entrance are completely separate/private, and the roof cavity is bricked to the tiled roof.

- A key consideration is that the fundamental purpose of Clause 4.6 is to provide flexibility in applying development standards in that in so doing better (more reasonable/practical) outcomes ensue. Strict application of the development standard results in no correction of the anomalous Strata lot, and unjustifiable hardship for the owners to comply with the prohibitive requirements of the amended Strata Titles Act.

8



- Notwithstanding the variation, the proposal satisfy the relevant objectives of both the standards and the zone. The proposal is consistent with the objectives of the development standard in that it will reinforce the pre-existing consistent lots (sizes & dimensions) in William Street to preserve streetscape continuity and conservation of historic subdivision patterns and heritage character, and the proposal does not result in any additional adverse amenity impacts to surrounding residential properties. Overall, given the site's location and context it is considered that the site is well suited for the proposed development, and that, as demonstrated, the objectives of the standard have been achieved.
- Variation to this particular development standard will allow a otherwise logical/practical development to proceed which will enhance/promote the prevalent subdivision pattern in the street.
- The development will result in public benefit through reducing the unnecessary administrative burdens and expenses for the current and future owners/residents of the properties.

The majority of the above environmental planning grounds that warrant the minor variation, are not "generic", but rather, specific to the site and circumstances of the development.

5 IS THE VARIATION IN THE PUBLIC INTEREST?

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

Pursuant to case law of *Ex Gratia P/L v Dungog Council (NSWLEC 148)*, the question that needs to be answered is "whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development".

There is no public benefit in maintaining strict compliance with the development standard given that there are no material impacts that will result from the variation to the Clause 4.1(3) standards, whilst better, more practical planning outcomes are achieved.

The departure from Clause 4.1(3) of the Ashfield LEP 2013 allows for the orderly and economic use of the site in a manner which otherwise achieves the outcomes and objectives of the relevant planning controls. Overall, the development as a whole will deliver a number of public benefits to the LGA, including:

- reinforcing the pre-existing consistent lots (sizes & dimensions) in William Street to preserve streetscape continuity and conservation of historic subdivision patterns and heritage character,

9



- not resulting in any additional adverse amenity impacts to surrounding residential properties.
- reducing the unnecessary administrative burdens and expenses for the current and future owners/residents of the properties.

On balance, it is considered that there is no benefit to the public or the community in maintaining the development standard. The proposed development will, as stated above, meet the desired objectives of the relevant standards. We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will be in the public interest.

6 IS THE VARIATION WELL FOUNDED?

In summary, this Clause 4.6 Variation Request is well founded as required by Clause 4.6 of the Ashfield LEP 2013 in that:

- Compliance with the development standard would be unreasonable and unnecessary, in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standard, which results in a same or better planning outcome than a strictly compliant development in the circumstances of this particular case; The development meets the objectives of the development standard and where relevant, the objectives of the land use zone, notwithstanding the variation;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The variation does not raise any matter of State of Regional Significance; and
- The development generally aligns with Council's Development Standards & Controls.

Based on the above, the variation is considered to be well founded. The consent authority may be satisfied that all requirements of Clause 4.6 have been accounted for, having regards to the merits of the proposed development.

If you have any questions regarding the above, please do not hesitate to contact Tranplan Consulting.

Yours sincerely

David Tran B. Planning (Honours)

TRANPLAN CONSULTING

10