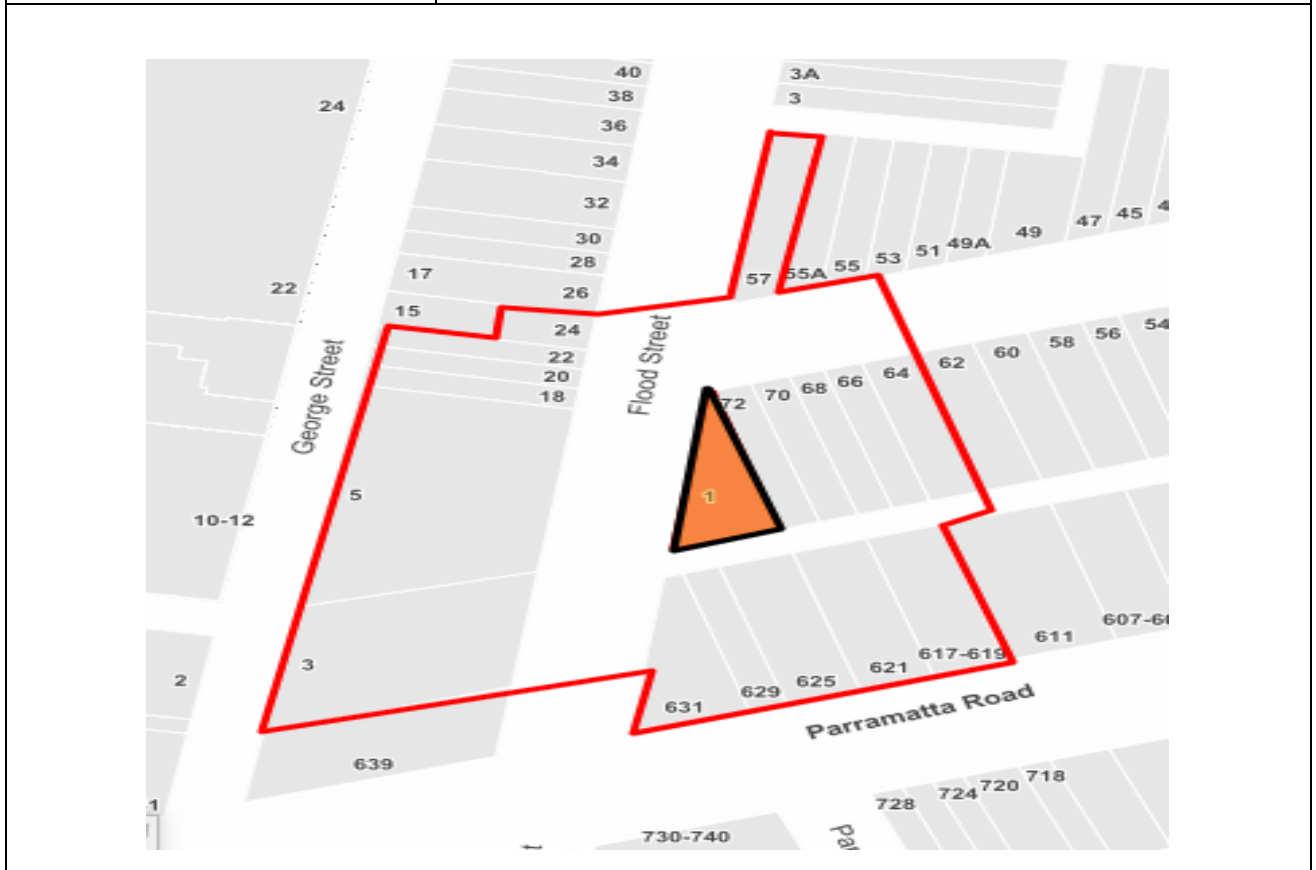






INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2021/1380
Address	1 Flood Street LEICHHARDT NSW 2040
Proposal	Torrens Title subdivision into two (2) lots.
Date of Lodgement	05 January 2022
Applicant	Stag Property Pty Ltd
Owner	Stag Property Pty Ltd
Number of Submissions	NIL
Value of works	\$850,000
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	One (1) allotment exceeds 10% variation of minimum lot size under Clause 4.1 - Minimum subdivision lot size – LLEP2013
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

Note: Due to scale of map, not all objectors could be shown.

1. Executive Summary

This report is an assessment of the application submitted to Council for a Torrens Title subdivision into two (2) lots. DA/2021/0098 dated 8 July 2021 approved an application to demolish the existing dwelling and construct a new dual occupancy and this is currently under construction at 1 Flood Street Leichhardt.

The application was notified to surrounding properties and no submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Proposed allotments under minimum 200sqm.

The non-compliances are acceptable given Council approved the demolition and construction of two attached double storey dwellings under DA/2021/0098 that met development standards under LLEP 2013 for site coverage, soft permeable landscaped area and floor space ratio and therefore the application is recommended for approval.

2. Proposal

Torrens title subdivision of land associated with approved double storey attached dwellings currently under construction. Both proposed allotments are under 200sqm in size.

3. Site Description

The subject site is located on the eastern side of Flood Street, between Easter and Albert Streets. The site consists of one (1) allotment and is generally triangular in shape with a total area of 354.6sqm and is legally described as Lot 1 in DP943476.

The site has a frontage to Flood Street of approximately 40.35 metres and a secondary frontage of approximate 18.1 metres to Easter Street.

The site supports 2 double storey attached dwelling houses currently under construction. The adjoining properties support residential dwellings to Albert Street, and parts of Flood Street and Parramatta Road have commercial properties.

The subject site is located within a conservation area. The property is identified as a flood prone lot.



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
CC/2022/0027	Construction Certificate (Council) modification for drainage and landscaping.	Approved 05/05/2022
PCA/2022/0330	Principal Certifier (Default category)	Accepted 12/04/2022
CC/2021/0088	Construction Certificate (Council) Construction of new dual occupancy with rear parking	Approved 20/10/2021
PCA/2021/1003	Principal Certifier -Construction of dual occupancy	Accepted 21/09/2021
DA/2021/0098	Demolition of the existing dwelling and construction of a new dual occupancy - two houses with rear parking.	Approved 08/07/2021
PREDA/2018/332	Demolition of existing structures and construction of an attached dual occupancy development and strata subdivision.	Issued 11/03/2019

4(b) Application history

Not applicable

5. Assessment

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*.

5(a) Environmental Planning Instruments

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

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

The following provides further discussion of the relevant issues:

5(a)(i) *Leichhardt Local Environment Plan 2013 (LLEP 2013)*

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

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.6 - Subdivision
- Clause 4.1 - Minimum subdivision lot size
- Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation
- Clause 5.21 - Flood Planning
- Clause 6.1 - Acid Sulfate Soils
- Clause 6.2 - Earthworks
- Clause 6.4 - Stormwater management

(i) Clause 2.3 - Land Use Table and Zone Objectives

The site is zoned LR1 under the *LLEP 2011*. The *LLEP 2013* defines the development as the subdivision of land associated with a dwelling:

dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

The development is permitted with consent within the land use table. The development is consistent with the objectives of the LR1 zone.

The following table provides an assessment of the application against the development standards:

Lot 1

Standard	Proposal	non compliance	Complies
Minimum subdivision lot size Minimum permissible: 200 sqm	156.4 sqm	43.6 sqm or 27.8%	No
Floor Space Ratio Maximum permissible: 0.7:1 or 109.48sqm	0.69:1 or 108.2 sqm	N/A	Yes
Landscape Area Minimum permissible: 15% or 23.46sqm	26.4% or 41.4sqm	N/A	Yes
Site Coverage Maximum permissible: 60% or 92.76sqm	46.3% or 72.5sqm	N/A	Yes

Lot 2

Standard	Proposal	non compliance	Complies
Minimum subdivision lot size Minimum permissible: 200 sqm	198.2 sqm	1.8 sqm or 0.09%	No
Floor Space Ratio Maximum permissible: 0.7:1 or 138.74sqm	0.53:1 or 106.2 sqm	N/A	Yes
Landscape Area Minimum permissible: 15% or 29.73sqm	31.6% or 62.8sqm	N/A	Yes
Site Coverage Maximum permissible: 60% or 118.92sqm	46.3% or 93.6sqm	N/A	Yes

Clause 4.6 Exceptions to Development Standards

As outlined in table above, the proposal results in a breach of the following development standard:

- Clause 4.1 - Minimum subdivision lot size

The applicant seeks a variation to the minimum subdivision lot size development standard under Clause 4.1 of the *Leichhardt Local Environment Plan 2013* by the following:

Lot 1: 27.8%(43.6sqm)

Lot 2: 0.09% (1.8sqm)

Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the *Leichhardt Local Environment Plan 2013* below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the *Leichhardt Local Environment Plan 2013* justifying the proposed contravention of the development standard which is summarised as follows:

- The variation to the minimum subdivision lot size standard is a result of subdividing an approved attached dual occupancy development under DA 2021/0098, to allow for each approved dwelling to be located on a separate lot. It is noted that the resultant lots comply with the FSR, landscaped area, and site coverage development standards confirming that the lots can comfortably contain separate dwellings in accordance with the envisioned character of development under the LEP.
- The proposed subdivision regularises a triangulated block, with the resultant subdivision pattern complimenting the established pattern along Albert Street to the east of the site, noting the proposed lots have frontages of 6.485m and 11.7m consistent with the width of lots to the east. As such the proposed subdivision will not have an adverse impact upon the Albert Street Heritage Conservation Area with respect to the established subdivision pattern.
- It is unreasonable to require compliance with the development standard as the proposed subdivision lot line responds to the layout of the approved dual occupancy on the site, with separate vehicular access and on-site parking from Easter Street, and pedestrian access from Albert Street provided to each lot.
- The proposed variation does not result in any significant environmental or amenity impacts when compared with a complying lot size. The resultant semi-detached dwellings are suitable for the subject site and compatible with the planning objectives and intended outcomes for the site and the objectives of the R1 – General Residential zone.

The applicant's written rationale adequately demonstrates compliance with the development standard is unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the R1 zone, for the following reasons:

- To development provides for the housing needs of the community.
- The approval of the subdivision contributes to providing for a variety of housing types in the locality.
- The development enables opportunities to work from home.
- The subdivision of the approved dwellings provides housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- The subdivision facilitates landscaped areas for the use and enjoyment of existing and future residents.
- The proposal protects and enhance the amenity of existing and future residents and the neighbourhood.
- Regularises the triangulated block that matches the subdivision pattern of Albert Street

- The proposed lots comply with FSR, Site Coverage and Landscaped Area development standards.

It is considered the development is in the public interest because it is consistent with the objectives of the Minimum subdivision lot size development standard, in accordance with Clause 4.6(4)(a)(ii) of the *Leichhardt Local Environment Plan 2013* for the following reasons:

- The proposal provides for lot sizes able to accommodate development that is consistent with relevant development controls
- The lot sizes are capable of supporting a range of development types
- The subdivision regularises the triangulated block that matches the subdivision pattern of Albert Street
- Resultant lots comply with FSR, Site Coverage and Landscaped Area development standards.

The concurrence of the Planning Secretary may be assumed for matters dealt with by the Local Planning Panel.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the *Leichhardt Local Environment Plan 2013*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Clause 4.1 Minimum subdivision lot size and it is recommended the Clause 4.6 exception be granted.

5(b) Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*.

The amended provisions contained in the Draft IWLEP 2020 are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

5(c) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Leichhardt Development Control Plan 2013

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	N/A
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A

Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	N/A
C1.3 Alterations and additions	N/A
C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.5 Corner Sites	Yes
C1.6 Subdivision	Yes
C1.7 Site Facilities	Yes
C1.8 Contamination	N/A
C1.9 Safety by Design	N/A
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	Yes
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	Yes
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A
Part C: Place – Section 2 Urban Character	
C2.2.3.2 West Leichhardt Distinctive Neighbourhood	Yes
C2.2.3.2(d) Hampton Farm Sub Area	
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.10 Views	N/A
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
Part C: Place – Section 4 – Non-Residential Provisions	N/A
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	N/A

D2.3 Residential Development	Yes
D2.4 Non-Residential Development	N/A
D2.5 Mixed Use Development	N/A
Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	N/A
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	Yes
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes – See Discussion
E1.2.3 On-Site Detention of Stormwater	Yes
E1.2.4 Stormwater Treatment	Yes
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	Yes
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	Yes
E1.3.2 Foreshore Risk Management	N/A
Part F: Food	N/A
Part G: Site Specific Controls	N/A

The following provides discussion of the relevant issues:

E1.2.2 Managing Stormwater within the Site

At the initial referral stage, Councils Engineers requested the provision of a drainage easement from Lot A over Lot B. The matter was resolved under modified Construction Certificate CC/2022/0027, permitting two drainage outlets to the kerb and gutter on Easter Street.

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

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 Community Engagement Framework for a period of 14 days to surrounding properties. No submissions were received in response to the initial notification.

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.

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

The application was referred to Council's Development Engineer and no objections are raised to the application.

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions / 7.12 levies are not payable for the proposal.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in Leichhardt Development Control Plan 2013.

The development will not result in any significant impacts on the amenity of the adjoining properties and the streetscape and is considered to be in the public interest.

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 of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the Minimum Subdivision Lot Size standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. 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 s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2021/1380 for the subdivision of land into two (2) Torren Title lots at 1 Flood Street, Leichhardt, subject to the conditions listed in Attachment A.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

The development must be carried out in accordance with plans and documents listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
CC-00	Subdivision Plan - Calculations	23/09/2021	Fortey & Grant Architecture
21-483 DP_DRAFT	Draft Subdivision Plan	29/11/2021	Vaughan Adam Wady

As amended by the conditions of consent.

PRIOR TO OCCUPATION CERTIFICATE

2. Works as Executed – Site Stormwater Drainage System

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a suitably qualified Civil Engineer who holds current Chartered Engineer

qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that:

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system commissioned and stormwater quality improvement device(s) and any pump(s) installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

3. Torrens Title Subdivision to Occur before Occupation

Prior to the issue of an Occupation Certificate for any dwelling on the site, the certifying authority is to be provided with evidence that the subdivision that forms part of this consent has been registered with the NSW Land Registry Services.

PRIOR TO SUBDIVISION CERTIFICATE

4. Torrens Title Subdivision

Prior to the issue of a Subdivision Certificate, the Certifying Authority must verify that the physical works within this consent have been constructed.

5. Section 73 Certificate

Prior to the issue of a Subdivision Certificate, the Certifying Authority must be provided with the Section 73 Certificate. A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation.

6. Separate Stormwater

Prior to the issue of a Subdivision Certificate, the Certifying Authority must be provided with details, endorsed by a practising stormwater engineer demonstrating separate drainage systems to drain each proposed lot.

7. Release of Subdivision Certificate

Prior to the release of a Subdivision Certificate, the Certifying Authority must be provided with a copy of the Final Occupation Certificate.

8. Separate Drainage Systems

Prior to the issue of a Subdivision Certificate, the Principal Certifier must be provided with a plan detailing that separate drainage systems must be provided to drain each proposed lot.

9. Redundant Vehicle Crossing

Prior to the issue of a Subdivision Certificate, the Principal Certifier must verify that all redundant vehicular crossings to the site must be removed and replaced by kerb and gutter and footpath paving in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications". Where the kerb in the vicinity of the redundant crossing is predominately stone, the replacement kerb must also be in stone.

ADVISORY NOTES

Failure to comply with conditions

Failure to comply with the relevant provisions of *the Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.

Dividing Fences Act

The person acting on this consent must comply with the requirements of the *Dividing Fences Act 1991* in respect to the alterations and additions to the boundary fences.

Useful Contacts

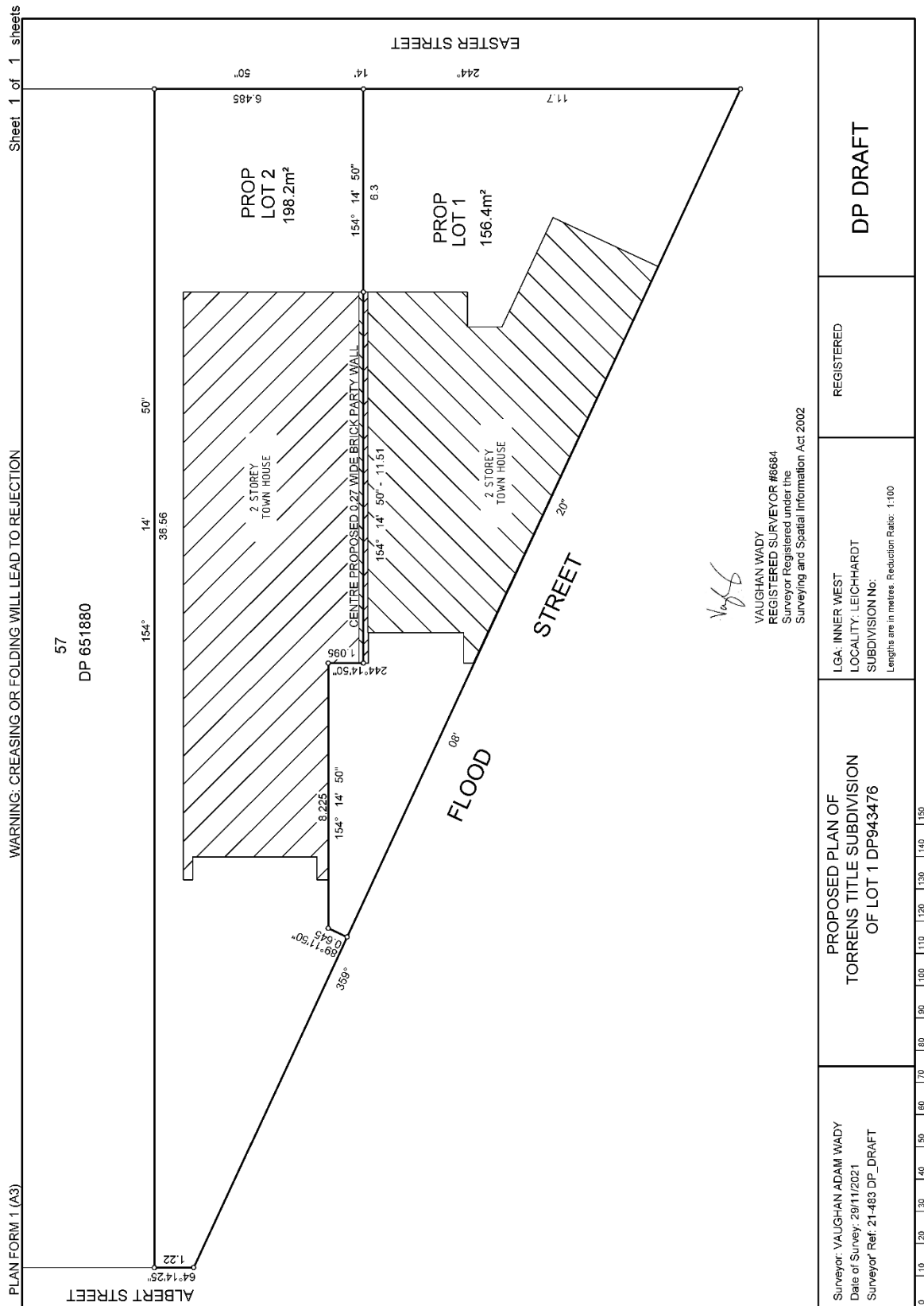
BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100

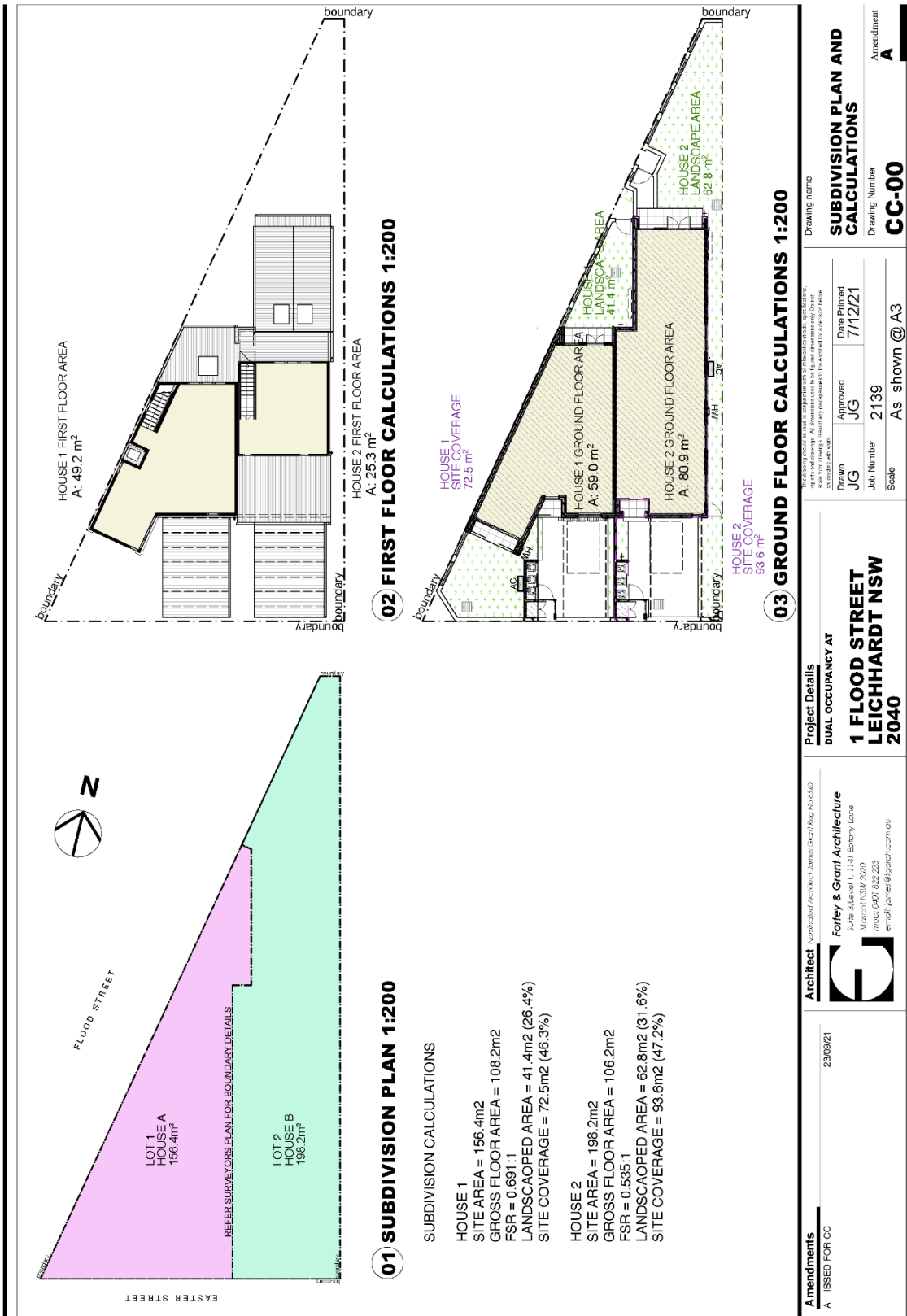
			www.dialprior toyoudig.com.au
Landcom		9841 8660	To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments	131441	www.lspc.nsw.gov.au
NSW Food Authority		1300 552 406	www.foodnotify.nsw.gov.au
NSW Government			www.nsw.gov.au/fibro www.diysafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage		131 555	www.environment.nsw.gov.au
Sydney Water		13 20 92	www.sydneywater.com.au
Waste Service - Environmental Solutions	SITA	1300 651 116	www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)			www.waterrating.gov.au
WorkCover Authority of NSW		13 10 50	www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

Street Numbering

If any new street numbers or change to street numbers (this includes unit and shop numbers) are required, a separate application must be lodged with and approved by Council's GIS Team before being displayed.

Attachment B – Plans of proposed development





Attachment C- Clause 4.6 Exception to Development Standards

Chapman Planning Pty Ltd

Suite 8/88 Mountain Street
ULTIMO NSW 2007

Phone: 9560 1718
www.chapmanplanning.com.au

22 December 2021

Clause 4.6 Variation to Development Standard

Property Description: 1 Flood Street, Leichhardt
Development: Torrens title subdivision of approved Dual Occupancy
Development Standard: Minimum subdivision lot size

Introduction

This is a clause 4.6 variation to support a development application for Torrens title subdivision of an approved dual occupancy development at 1 Flood Street, Leichhardt. This clause 4.6 seeks variation to the 200m² minimum subdivision lot size development standard contained in clause 4.1 – Minimum subdivision lot size of the *Leichhardt Local Environmental Plan 2013*.

The variation to the minimum lot size is a result of the Torrens title subdivision of the approved dual occupancy on the site under DA 2021/0098, allowing for each dwelling to be located on a separate allotment.

The proposed variation is a result of the irregular shape of the site being a triangulated block, and the layout of the approved dual occupancy development. The resultant Torrens title allotments have been designed to ensure that each resultant semi-detached dwelling meets the FSR, landscaped area, and site coverage development standards contained within the *Leichhardt LEP 2013*.

The proposed lot areas, frontages, floor space ratios and landscaped areas are as follows:

Lot Number	Lot Size & Frontage width	FSR	Landscaped Area	Site Coverage
Lot 1	156.4m ² & 6.485m	108.2m ² & 0.691:1	41.4m ² & 26.4%	72.5m ² & 46.3%
Lot 2	198.2m ² & 11.7m	106.2m ² & 0.535:1	62.8m ² & 31.6%	93.6m ² & 46.3%

The proposed subdivision results in lots sized 156.4m² (Lot 1) and 198.2m² (Lot 2), presenting a variation of 43.6m² / 27.8% and 1.8m² / 0.09% respectively to the minimum lot size standard.

The fundamental role of clause 4.6 in any local environmental plan is reflected in the recent decision of Commissioner Clay in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112. In particular, Commissioner Clay notes at [73] of his decision that:

“First, it should be noted cl 4.6 of WLEP is as much a part of WLEP as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome.”

The objectives of clause 4.6 facilitate the flexible application of development standards to particular development in order to achieve an improved environmental planning outcome.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various relevant decisions in the Land and Environment Court and Court of Appeal of NSW.

The request to contravene the development standard for the minimum subdivision lot size has been prepared in accordance with the principles applied in relevant case law including:

1. *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79;
2. *Wehbe v Pittwater Council* (2007) 156 LGERA 446;
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
5. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; and
6. *RebelMH Neutral Bay Pty Limited v North Sydney Council* (2019) NSWCA 130

This Clause 4.6 variation request is set out in accordance with the relevant principles established by the Court including:

1. Is the development consistent with the objectives of the zone?
2. Is the proposed development consistent with the objectives of the development standard which is not met?
3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (cl 4.6(3)(a) and cl 4.6(4)(a)(i))
4. Are there sufficient environmental planning grounds to justify contravening the development standard and therefore the Applicant's written request to vary the development standard is well founded? (cl 4.6(3)(b) and 4.6(4)(a)(ii))

Is the proposed development in the public interest because it is consistent with the objectives of the standard and the zone? (cl 4.6(4)(a)(ii))

Matters required to be demonstrated under clause 4.6(3) of the LEP

Compliance with the development standard is unreasonable or unnecessary in this particular case

Pursuant to clause 4.6(3)(a) of the LEP, the variation to the lot size development standard is acceptable in the circumstances of this case and compliance with the development

standard is considered unreasonable and unnecessary because the proposed development is consistent with the objectives of the lot size standard, notwithstanding non-compliance with the standard.

- **Objectives of the Minimum subdivision lot size Development Standard**

The objectives of the development standard are at clause 4.1(1) of the LEP as follows:

- (a) to ensure that lot sizes are able to accommodate development that is consistent with relevant development controls,*
- (b) to ensure that lot sizes are capable of supporting a range of development types.*

The proposed development meets the objectives of Clause 4.1 of the LEP based on the following assessment:

Objective (a) – The proposed allotments are of a sufficient size to ensure compliance with the relevant FSR, landscaped area and site coverage development standards contained within the Leichhardt LEP 2013, demonstrating that each lot can comfortably accommodate a dwelling that is consistent with the relevant controls.

Objective (b) – The resultant lot sizes are capable of supporting semi-detached dwellings noting the subdivision relates to an approved dual occupancy development, with each dwelling contained on a separate lot. The lot sizes are consistent with that of the surrounding locality – Albert Street Heritage Conservation Area and can support residential development in accordance with the character of the locality.

It is unnecessary to require compliance with the minimum lot size development standard due to the following reasons:

- The variation to the minimum subdivision lot size standard is a result of subdividing an approved attached dual occupancy development under DA 2021/0098, to allow for each approved dwelling to be located on a separate lot. It is noted that the resultant lots comply with the FSR, landscaped area, and site coverage development standards confirming that the lots can comfortably contain separate dwellings in accordance with the envisioned character of development under the LEP.
- The proposed subdivision regularizes a triangulated block, with the resultant subdivision pattern complimenting the established pattern along Albert Street to the east of the site, noting the proposed lots have frontages of 6.485m and 11.7m consistent with the width of lots to the east. As such the proposed subdivision will not have an adverse impact upon the Albert Street Heritage Conservation Area with respect to the established subdivision pattern.
- It is unreasonable to require compliance with the development standard as Council has stated in-principle support of the subdivision in its assessment of the approved dual occupancy on the site under DA 2021/0098. The proposed subdivision lot line responds to the layout of the approved dual occupancy on the site, with separate

vehicular access and on-site parking from Easter Street, and pedestrian access from Albert Street provided to each lot.

- The proposed variation does not result in any significant environmental or amenity impacts when compared with a complying lot size.
- The resultant semi-detached dwellings are suitable for the subject site and compatible with the planning objectives and intended outcomes for the site and the objectives of the R1 – General Residential zone.

In line with the decisions in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, it is clear that compliance with a development standard is unreasonable or unnecessary if the objectives are met.

There are sufficient environmental planning grounds to justify contravening the development standard

Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate that there are other environmental planning grounds that justify contravening the development standard, preferably being grounds that are specific to the site.

Preston CJ noted in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the aspect of the development that contravenes the development standard should be the focus (as opposed to the development as a whole) of any analysis.

Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the minimum subdivision lot size development standard because:

- The variation to the minimum lot size standard is a result of the irregular shape of the site being a triangulated block with street frontages to Albert Street, Flood Street, and Easter Street. The subdivision relates to an approved dual occupancy development and does not seek to increase residential density on the site beyond that of the approved development.
- The proposed subdivision compliments the established and predominant subdivision pattern of development east of the site along Albert Street. In this case, the resultant lots proposed are suitable for the subject site with respect to the established development context, and are compatible with the planning objectives and intended outcomes of the objectives of the R1 – General Residential zone.
- The variation to the minimum lot size control does not result in an overdevelopment of each lot as the resultant lots comply with the FSR, landscaped area, and site coverage development standards confirming that the lots can comfortably contain

separate dwellings in accordance with the envisioned character of development under the LEP.

- The variation in minimum subdivision lot size is consistent with the following relevant aims of the *Leichhardt LEP 2013* found at clause 1.2(2):
 - (2)(c) The variation will result in a subdivision of the site that is more compatible with the established subdivision pattern of the Albert Street Heritage Conservation Area, with lot frontages to Easter Street that are consistent with the eastern adjoining properties.
 - (2)(e) The variation does not result in any adverse amenity impacts noting no physical works are proposed.
 - (2)(j) The subdivision results in 2 x semi-detached dwellings on the subject site allowing for each dwelling to be owned under separate title, contributing to a variety of housing types within the locality.

- The variation in lot size is consistent with the following objects of the Environmental Planning and Assessment Act, 1979 as follows:
 - 1.3(c) – The variation promotes the orderly use of the land, by subdividing an approved dual occupancy allowing for each dwelling to be owned under separate title.
 - 1.3(f) – The variation will result in a subdivision of the site that is more compatible with the established subdivision pattern of the Albert Street Heritage Conservation Area, with lot frontages to Easter Street that are consistent with the eastern adjoining properties.
 - 1.3(g) – The variation to the lot size control does not alter the design of the approved dual occupancy on the site, and does not result in unreasonable amenity impacts to adjoining properties or the public domain with regard to overshadowing or loss of views.

Clause 4.6 (4)(a)(i) – The consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3)

As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, by establishing that the objectives of the development standard are achieved notwithstanding the non-compliance.
2. The environmental planning grounds relied on are sufficient to justify the development standard.

In accordance with the findings of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the Consent Authority under Clause 4.6(4)(a)(i) must only be satisfied that the request addresses Clause 4.6(3). Under Clause 4.6(4)(a)(i) the Consent Authority is not to determine in their opinion whether the request satisfies the requirements of Clause 4.6(3)(a) and (b), just that the request has been made and that these items have demonstrated.

The relevant items in Clause 4.6(3) have been demonstrated above.

The proposed development is in the public interest

In relation to clause 4.6(4)(a)(ii) of the LEP, the proposed development is in the public interest because it is consistent with the objectives of the applicable minimum subdivision lot size standard and the objectives for development in the R1 – General Residential zone in accordance with the planning assessment provided as follows:

Objective	Consistency
<i>To provide for the housing needs of the community.</i>	The proposal relates to an approved dual occupancy development.
<i>To provide for a variety of housing types and densities.</i>	The subdivision results in 2 x semi-detached dwellings on the subject site allowing for each dwelling to be owned under separate title, contributing to a variety of housing types within the locality.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	N/A
<i>To improve opportunities to work from home.</i>	N/A
<i>To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.</i>	N/A
<i>To provide landscaped areas for the use and enjoyment of existing and future residents.</i>	The proposal will not impact upon the approved built form on the subject site, and each lot is provided with landscaped area to meet the requirements of Clause 4.3A of the Leichhardt LEP 2013.
<i>To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.</i>	The proposal responds to the subdivision pattern of the adjoining properties along Albert Street and regularizes the triangulated allotment with lot frontages that complement the established lot pattern of the street.
<i>To protect and enhance the amenity of existing and future residents and the neighbourhood.</i>	The proposal would not adversely impact upon the residential amenity of the adjoining properties and surrounding locality.

In addition to the above reasons, the proposal is also in the public interest because:

- The development proposal results in each dwelling within the approved dual occupancy development to be located on a separate lot that can comfortably accommodate each dwelling with adequate landscaped area and private open space, with complying site coverage and floor space ratio,
- The proposed subdivision would allow for the orderly development of the land contributing to housing choice within the locality, within a subdivision pattern that is consistent with the predominant and established subdivision pattern of nearby development within the Albert Street Heritage Conservation Area.
- The variation to the lot size standard is the result of the irregular shape of the existing lot on the site, being a triangulated block. The variation is a direct result of subdividing an approved dual occupancy and the subdivision of the site has been supported in principle by Council in its assessment of DA 2021/0098.

Taking into consideration the above, the proposed development is in the public interest as it is consistent with the objectives of the development standard and the R1 General Residential zone under the *Leichhardt Local Environmental Plan 2013*.

The variation to the lot size standard is the result of the irregular shape of the existing site, and layout of the approved dual occupancy on the subject site. The proposal does not attempt to affect the intended planning outcome for the locality, rather the lot sizes and subdivision results in semi-detached dwellings that are consistent with the envisioned scale and form of development planned for the site.

For these reasons, the proposal and the variation does not undermine the integrity of the development standard and its objectives, as well as the zoning objectives which have been adopted by Council as being in the public interest.

The concurrence of the Secretary

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (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.*

The proposal is not likely to raise any matter of significance for State or regional environmental planning. As addressed above the variation is consistent with the objectives of the development standard pursuant to the *Leichhardt Local Environmental Plan 2013*. The proposal is considered to be in the public interest because the proposed

development is consistent with the objectives of the standard and the objectives of the R1 General Residential zone.

The public benefit of maintaining the development standard is not considered significant as a dual occupancy development has been approved on the site, and the proposed subdivision will allow for each dwelling to be located on a separate lot with not change in the approved built form. Further, the proposal demonstrates that each lot is of a sufficient size to accommodate a semi-detached dwelling that complies with the FSR, landscaped area and site coverage development standards contained in the *Leichhardt LEP 2013*.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted under clause 4.6(5) of the LEP. The exceedance of the standard will not result in adverse amenity impacts and is in the public interest.

Conclusion

The development proposal presents a variation to the 200m² minimum subdivision lot size control contained in Clause 4.1 of the *Leichhardt LEP 2013*; notwithstanding, the proposal allows for the subdivision of an approved dual occupancy on the site that demonstrates that the resulting lot areas are capable of suitably accommodating semi-detached dwellings that comply with the FSR, landscaped area and site coverage standards contained in the LEP.

The variation to the standard does not attempt to affect the planning outcome for the broader locality; rather the proposed variation results in lots that are consistent with the objectives of the control and allow for each dwelling to be located on a separate lot and owned under separate title.

The proposed subdivision complements the established subdivision pattern of the properties to the east of the site within the Albert Street Heritage Conservation Area, with lot frontages to Easter Street that are consistent with the eastern adjoining lots.

The application to vary the minimum subdivision lot size development standard is well founded and as addressed the proposed development meets the objectives of the development standard and achieves an acceptable outcome for the subject site that is in the public interest.

In accordance with the environmental planning grounds addressed in this clause 4.6 variation, the variation to the minimum lot size development standard, and proposed Torrens title subdivision can be supported.

Chapman Planning Pty Ltd