




 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2022/0421
Address	220-222 Old Canterbury Road SUMMER HILL
Proposal	Torrens Title Subdivision of the existing site and amend SP 60270 to create a new Torrens Title lot fronting Herbert Street comprising a dwelling house (Lot 1) and a new lot fronting Old Canterbury Road comprising of a residential flat building (Lot 2)
Date of Lodgement	08 June 2022
Applicant	Mr Tyson C Ray
Owner	Owners of Strata Plan 60270
Number of Submissions	Two (2)
Value of works	NA
Reason for determination at Planning Panel	Section 4.6 variation exceeds 10%
Main Issues	Variation to clause 4.1 minimum lot size, variation to clause 4.4 floor space ratio of the ALEP 2013.
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Section 4.6 Exception to Development Standards
Attachment D	Statement of Heritage Significance
	
LOCALITY MAP	
Subject Site 	Objectors 
Notified Area 	Supporters 
Note: Objectors are from subject site	

1. Executive Summary

This report is an assessment of the application submitted to Council for the Torrens Title subdivision of and existing site and amend SP 60270 to create a new Torrens Title lot fronting Herbert Street comprising a dwelling house (Lot 1) and a new lot fronting Old Canterbury Road comprising of a residential flat building (Lot 2) at 220-222 Old Canterbury Road, Summer Hill.

The application was notified to surrounding properties and 2 submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- The applicant seeks a variation to the minimum lot size development standard under Section 4.1 of the *Ashfield Local Environmental Plan 2013* by a maximum of 61.5% or 307.5m².
- The applicant seeks a variation to the Floor Space Ratio development standard under Section 4.4 of the *Ashfield Local Environmental Plan 2013* by a maximum of 113.75sqm or 118%.
- The existing residential flat building is reliant upon existing use rights for permissibility and on-going operation.

The non-compliances are acceptable given the merits of the case and therefore the application is recommended for approval.

2. Proposal

The current application seeks consent for the Torrens Titles Subdivision of the existing site and to amend SP 60270 to create a new Torrens Title lot fronting Herbert Street comprising a dwelling house (Lot 1) and a new lot fronting Old Canterbury Road comprising a residential flat building (Lot 2).

The proposed Lot 1 is to have a frontage of 19.6m to Herbert Street and a site area of 339.8m², and contains a dwelling house. Proposed Lot 2 is to have a frontage to Old Canterbury Road of 18.4m, a secondary frontage to Herbert Street of 20.9m with a total site area of 192.5sqm. Lot 2 would contain a residential flat building (4 x 1 Bedroom units).

3. Site Description

The subject site is located on the western side of Old Canterbury Road, between James Street and Herbert Street. The site consists of 1 allotment and is generally rectangular in shape with a total area of 532.2sqm.

The site has a frontage to Old Canterbury Road of 18.4 metres and a secondary frontage of 40.5 metres to Herbert Street.

The site supports a two-storey attached dwelling house fronting Herbert Street and a 2 storey residential flat building fronting Old Canterbury Road (containing 4 x 1 bedroom units). The adjoining properties support single and 2 storey dwelling houses, a 3-storey residential flat building and an educational establishment (Summer Hill Public School).

The property is located within the Clover Hill Heritage Conservation Area. The property is identified as a contributory 1 item to the HCA. The subject site is zoned R2 Low Density Residential under ALEP 2013.

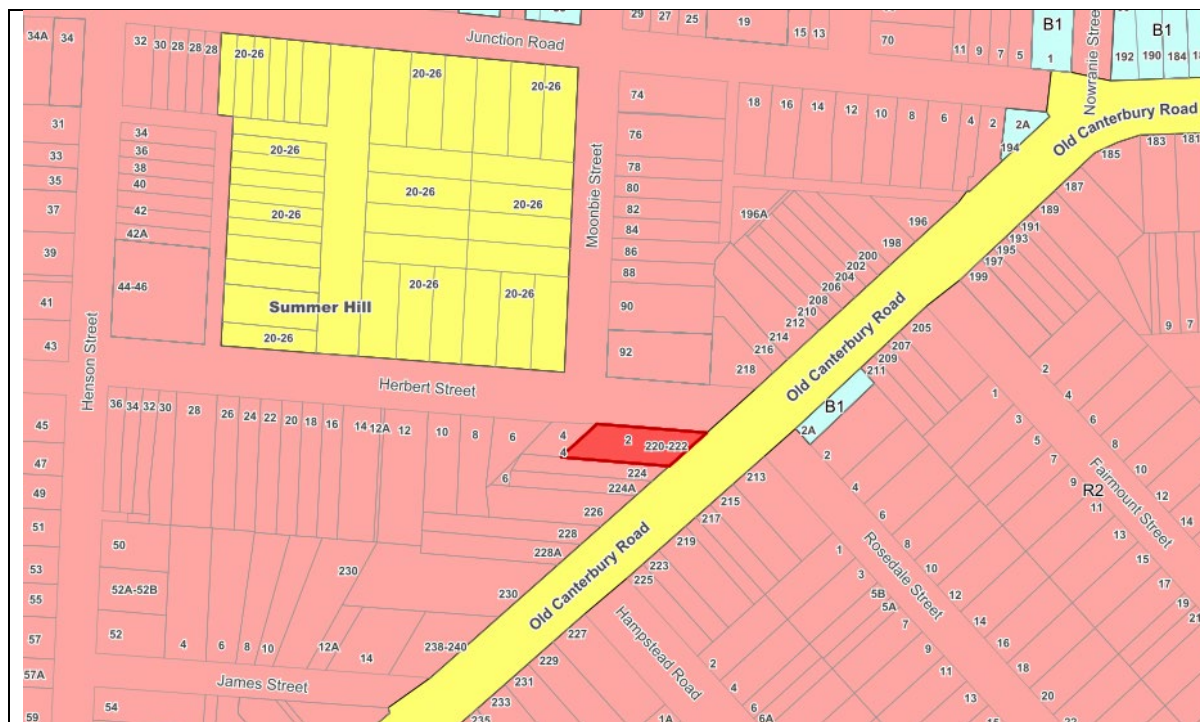


Figure 1 – Site zoning, site identified by red box.

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
-	The building at 220 Old Canterbury Road was built about 1885 or 1886 and was initially used as a bakery. Between 1865 – 1939 it was used as a butcher.	Historic uses outlined in HIS
-	1966 building converted into 4 flats	Based on HIS no record of application with Council

006.1987.00000062.001	Addition to Flat Building – Conversion of an existing factory building to a residence, including demolition of exiting garage and construction of a balcony and new stairs.	Approved 30/09/1986
015.1996.0000004.001	Subdivision Certificate – Private Certifier – Strata Subdivision (5 Lots)	Approved – Private Certifier
009.2019.0000004.001	PREDA – Subdivision of existing strata plan into two Torrens Title Lots	Advice Issued

4(b) Application history

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

Date	Discussion / Letter / Additional Information
08/06/2022	Application Lodged
23/08/2022	Request for additional information sent to applicant. This request outlined a requirement for the submission of existing floor plans and a demonstration that the residential flat building meets the requirements of division 4.11 of the EP&A Act 1979 – Existing Uses.
30/09/2022	All requested additional information was submitted to Council by the applicant.

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 (EPA Act 1979)*.

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*

The following provides further discussion of the relevant issues:

5(a)(i) *State Environmental Planning Policy (Resilience and Hazards) 2021*

Chapter 4 Remediation of land

Section 4.16 (1) of the SEPP requires the consent authority not consent to the carrying out of any development on land unless:

*“(a) it has considered whether the land is contaminated, and
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”*

In considering the above, there is no evidence of contamination on the site.

There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council’s records. The land will be suitable for the proposed use as there is no indication of contamination.

The application involves does not involve category 1 remediation under *SEPP (Resilience and Hazards) 2021*.

5(a)(ii) State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 Infrastructure

Development with frontage to classified road

In considering Section 2.118(2) of *SEPP (Transport and Infrastructure) 2021*:

Vehicular access to the land will continue to be provided by Old Canterbury Road and Herbert Street and this existing arrangement is considered practical and safe as no intensification of use is sought. The design will not adversely impact the safety, efficiency, and ongoing operation of the classified road.

5(a)(iii) Existing Uses

(i) Environmental Planning and Assessment Act 1979

Division 4.11 (Part 4.65 – 4.68) of the *Environmental Planning and Assessment Act 1979* contains provisions that provide a framework for the definition of an ‘existing use’ and provides further limitation and regulation for the continuance and development of existing uses.

Firstly, Part 4.65 of the *Act* provides a definition of an existing use. In plain terms an existing use is defined in the following manner:

- It is a use that was lawfully commenced;
- It is a use that is currently prohibited; and
- It is a use that has not been abandoned since the time that it became a prohibited use.

It is believed that the use of flats at 220 Old Canterbury Road begun in 1966, however no application for this use can be located within Council's records. The earliest application which can be located for this site (which details the use of 220 Old Canterbury Road) is 006.1987.00000062.001. This application provided consent for the use of the building known as 2 Herbert Street as a dwelling house, within this application floor plans and the use of 220 Old Canterbury Road as a residential flat building are provided to the former Ashfield Council, with the application outlining that the new dwelling and existing residential flat building will operate from the same site. Under the ALEP 1985 the site was zoned No 2 (b) which permitted residential flat buildings. In this instance the lawful use of the site as a residential flat building is taken to have been granted under application 006.1987.00000062.001. Council records indicate that this application was approved on 30/09/1986. There is no indication that the use has been abandoned since its approval in 1986. Residential accommodation is currently prohibited in the R2 – Low Density Residential Zone under the *Ashfield Local Environmental Plan 2013*.

It is noted that Part 4.67(3) of the Act specifies that:

“An environmental planning instrument may, in accordance with the Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force”.

As such, the provisions contained in *ALEP 2013* do not apply to the residential flat building at 220 Old Canterbury Road. Rather, Division 4.11 of the Act services to enable the continuation of an existing use and refers to the relevant regulations (*Environmental Planning and Assessment Regulation 2021*) with respect to the property being enlarged, expanded or intensified, or being altered or extended for the existing use.

(ii) *Environmental Planning and Assessment Regulation 2021*

Part 7 of the *EP&A Regulations 2021* are relevant to the development as they set out the matters for consideration for enlargement, expansion or intensification of existing uses and the consent requirements for alterations and additions to an existing use.

The proposal involves Torren Title subdivision of the lots containing the block of units and dwelling house which is permitted by Part 7 of the *EP&A Regulations 2021*.

The existing use will undergo subdivision which results in an increase in floor area (relative to the site area), however no building works are sought by the current application. It is therefore considered that the proposal does not result in an enlargement, expansion or intensification of the existing use.

The proposed works would be for the existing use of the site as flats, thereby satisfying Clause 43(2) of the *EP&A Regulations 2000*.

(iii) Land and Environment Court Planning Principles – Existing Use Assessments

In Land and Environment Court proceedings *Fodor Investments v Hornsby Shire Council [2005] NSWLEC at 17*, Senior Commissioner Roseth established a planning principle for the assessment of existing use rights. The 'Redevelopment – existing use rights and merit assessment' Planning Principle developed as a result of that judgment is used hereunder to assess the merits of the development, specifically paragraph 17 which is reproduced below:

"17. Four questions usually arise in the assessment of existing use rights developments, namely:"

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

Height

A maximum building height of 8.5 metres applies to the land and the immediately adjoining sites to the north, south, east, and west under Clause 4.3 of *ALEP 2013*. The proposed development does not alter the height of the existing buildings. The overall maximum height of buildings on site is unaltered by the current proposal.

FSR

The site is afforded an FSR of 0.5:1 in accordance with Clause 4.4 of *ALEP 2013*. The proposed subdivision results in the existing developments having an FSR of Lot 1 – Dwelling house: 0.60:1, Lot 2 – residential flat building: 1.09:1. The current application does not alter or propose any building works. The change in FSR is based solely on the change in lot sizes resulting from subdivision. The proposal therefore does not alter the existing buildings bulk/scale when viewed from neighbouring sites.

Setbacks

The setbacks proposed are not altered by the proposal, existing setbacks are generally consistent with the building setbacks of surrounding residential dwellings.

The proposed setbacks will not have an adverse impact on adjoining properties having regard to solar access, visual privacy, bulk and scale. The proposed building setbacks are consistent with the objectives for building setbacks contained in *CIWDCP 2016*.

2. What is the relevance of the building in which the existing use takes place?

The existing building on site contains four (4) individual flats. Analysis of other neighbouring structures has highlighted a generally consistent use and bulk with the surrounding buildings to the east and west. The development would continue to be used as individual flats and remains of a scale and form that is consistent with surrounding development.

It is noted that the property is located within a Heritage Conservation Area and an assessment of the heritage impact is undertaken later in this report.

3. What are the impacts of the development on the adjoining land?

The development has no adverse impacts on adjoining land. The proposal is generally consistent with the relevant provisions of CIWDCP 2016 relating to privacy, overshadowing, visual bulk and general amenity, which is discussed later in this report.

4. What is the internal amenity?

The development incorporates suitably sized internal spaces, facilities and a number of window openings which is resultant in acceptable internal amenity for this use.

Concluding remarks

The proposal has been assessed against the four (4) planning principles established by the NSW Land and Environment Court in relation to existing use rights. The proposal is unlikely to have any unreasonable impacts upon the adjoining properties and/or the streetscape.

Council has records that indicate the use was lawfully established as it was a permissible form of the development on the land and the development proposed seeks a continuation of the lawfully established use.

As such, the development is considered acceptable having regard to the provisions of Division 4.11 of the *Environmental Planning and Assessment Act 1979* and Council is satisfied the subject site benefits from existing use rights and the development proposed is a continuation of that existing use.

5(a)(iv) Local Environmental Plans

Inner West Local Environmental Plan 2022

The *Inner West Local Environmental Plan 2022 (IWLEP 2022)* was gazetted on 12 August 2022. As per Section 1.8A – Savings provisions, of this Plan, as the subject application was made before the commencement of this Plan, the application is to be determined as if the *IWLEP 2022* had not commenced.

Section 4.15(1)(a)(i) of the *EPA Act 1979* requires consideration of any Environmental Planning Instrument (EPI), and Section 4.15(1)(a)(ii) also requires consideration of any EPI that has been subject to public consultation. The subject application was lodged on 8 June 2022, on this date, the *IWLEP 2022* was a draft EPI, which had been publicly exhibited and was considered imminent and certain.

Notwithstanding this, the amended provisions of the draft EPI do not alter the outcome of the assessment of the subject application.

Ashfield Local Environmental Plan 2013 (ALEP 2013)

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

- Section 1.2 - Aims of Plan
- Section 2.3 - Land Use Table and Zone Objectives
- Section 2.6 - Subdivision
- Section 4.1 - Minimum subdivision lot size
- Section 4.3 - Height of buildings
- Section 4.4 - Floor space ratio
- Section 4.5 - Calculation of floor space ratio and site area
- Section 4.6 - Exceptions to development standards
- Section 5.10 - Heritage Conservation

Section 2.3 Land Use Table and Zone Objectives

The site is zoned R2 – Low Density Residential under the *ALEP 2013*. The *ALEP 2013* defines the development as subdivision with the resulting lots accommodating:

dwelling house means a building containing only one dwelling.

&

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.

Having regard to the land use table, a dwelling house is permitted with consent while the residential flat building is prohibited (see assessment above). The development (subdivision) is consistent with the objectives of the R2 zone.

Section 4 Principal Development Standards

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

Standard	Proposal	non compliance	Complies
Minimum subdivision lot size – 500m ²	Lot 1 – 339.8m ²	Lot 1 – 32% or 160.2m ²	No
	Lot 2 – 192.5m ²	Lot 2 – 61.5% or 307.5m ²	No
Height of Building Maximum permissible: 8.5m	No change from existing	N/A	N/A

Floor Space Ratio Maximum permissible: 0.5:1	Lot 1 – 0.60:1 or 206.4m ²	36.5sqm or 21.4%	No
Lot 1 – 169.9m ²	Lot 2 – 1.09:1 or 210m ²	113.75sqm or 118%	No
Lot 2 – 96.25m ²			

Having regard to the above, it is noted that the development standards for the residential flat building do not require a 4.6 exception to development standards as the standards are not strictly applicable to the lot with existing use rights.

Section 4.6 Exceptions to Development Standards

As outlined in table above, the proposal results in a breach of the following development standards for the dwelling house (Lot 1):

- Section 4.1 – Minimum lot size
- Section 4.4 - Floor space ratio

Minimum Lot Size

The applicant seeks a variation to the minimum lot size development standard under Section 4.1 of the *Ashfield Local Environmental Plan 2013* by a maximum of 32% or 160.2m² for Lot 1 which is to contain the dwelling house.

Section 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 Section 4.6 of the *Ashfield Local Environmental Plan 2013* below.

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

- *The subdivision pattern in the surrounding area is identified as of varied allotment sizes and shapes. The proposed subdivision is therefore consistent with the surrounding lot pattern and enables the subsequent development of buildings that are consistent with existing or desired future streetscape character.*
- *As demonstrated in the Concept Building Envelope Plan, the proposed new lots have sufficient area and dimensions to be useable for their intended future use.*
- *The proposed subdivision will not alter the existing development. The lot size non-compliance will not be visible from the streetscape and will be indiscernible from surrounding properties.*

- *The proposal does not include any building works. The proposal will retain the existing buildings on the site. The bulk and scale of the existing development on the proposed new lots is therefore of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality.*

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 R2 – Low Density Residential Zone, in accordance with Section 4.6(4)(a)(ii) of the *Ashfield Local Environmental Plan 2013* for the following reasons:

- The proposal will retain the existing residential use of the site and continue to provide for housing needs in the area. The proposal does not alter the existing residential accommodation provision to the area and ensures that the needs of the community will be continued to be met through the provision of a variety of housing types.
- The proposal will continue to provide a land use which provides facilities and services to meet the day to day needs of residents. Analysis of provided floor plans has highlighted that the two sites are currently divided in the manner currently proposed. Currently the RFB at 220 Old Canterbury Road is not reliant upon the site known as 2 Herbert Street for POS or amenity. Analysis of Council records has highlighted that this separation has been existing since at least 2009. The current application formalises this separation via the registration of 2 separate lots.

It is considered the development is in the public interest because it is consistent with the objectives of the minimum lot size development standard, in accordance with Section 4.6(4)(a)(ii) of the *Ashfield Local Environmental Plan 2013* for the following reasons:

- The subdivision pattern in the surrounding area is identified as of varied allotment sizes and shapes. It is considered that there is no existing pattern within the immediate context. The proposed subdivision has been created based around the setting of the existing heritage contributory buildings and aligns with existing party walls, therefore the proposed subdivision will not enable development which is in-consistent with the existing streetscape and visual setting of the existing developments.
- The proposed subdivision pattern does not adversely impact the streetscape or amenity of neighbouring residential areas.

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 Section 4.6(1)(b) and requirements of Section 4.6(3)(b) of the *Ashfield Local Environmental Plan 2013*. For the reasons outlined

above, there are sufficient planning grounds to justify the departure from the minimum lot size development standard and it is recommended the Section 4.6 exception be granted.

Floor Space Ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Section 4.4 of the *Ashfield Local Environmental Plan 2013* by a maximum of 36.5sqm or 21.4% for Lot 1 which is to contain the dwelling house.

Section 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 Section 4.6 of the *Ashfield Local Environmental Plan 2013* below.

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

- *Compliance with the development standard is unreasonable and unnecessary as the proposal does not include any building works. The proposal will retain the existing buildings on the site. The building height and bulk of the existing development on the proposed new lots is therefore of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality.*
- *Considering that the proposal will retain the existing built form on the site, the proposal will not result in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity.*
- *The FSR non-compliance relates to the existing development on the proposed new lots and will therefore not be visible from the streetscape and will be indiscernible from surrounding properties.*

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 R2 Low Density Residential, in accordance with Section 4.6(4)(a)(ii) of the *Ashfield Local Environmental Plan 2013* for the following reasons:

- The proposal will retain the existing residential use of the site and continue to provide for housing needs in the area. The proposal does not alter the existing residential accommodation provision to the area and ensures that the needs of the community will be continued to be met through the provision of a variety of housing types.

- The proposal will continue to provide a land use which provides facilities and services to meet the day to day needs of residents. Analysis of provided floor plans has highlighted that the two sites are currently divided in the manner currently proposed. Currently the RFB at 220 Old Canterbury Road is not reliant upon the site known as 2 Herbert Street for private open space or amenity. Analysis of Council records has highlighted that this separation has been operating since at least 2009. The current application formalises this separation via the registration of 2 separate lots.

It is considered the development is in the public interest because it is consistent with the objectives of the Floor Space Ratio development standard, in accordance with Section 4.6(4)(a)(ii) of the *Ashfield Local Environmental Plan 2013* for the following reasons:

- The current application seeks development consent for subdivision only. The proposal does not incorporate any building works. All impacts of bulk/scale will remain as existing and will continue to be in-keeping with the existing locality.
- The proposed subdivision will not impact the sites heritage contribution to the HCA or streetscape the proposed subdivision formalises the separation of lots and places them on separate titles. The proposal has been reviewed by Council's Heritage advisor who outlined no objection to the proposal.
- The proposal will continue to provide existing levels of amenity neighbouring sites. The proposed subdivision will not result in greater amenity impacts for neighbours.
- The proposed subdivision maintains the existing visual relationship between the site and the streetscape.

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 Section 4.6(1)(b) and requirements of Section 4.6(3)(b) of the *Ashfield Local Environmental Plan 2013*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from floor space ratio development standard and it is recommended the Section 4.6 exception be granted.

5.10 Heritage Conservation

The property is located within the Clover Hill Heritage Conservation Area. The property is identified as a contributory 1 item to the HCA. The proposal has been reviewed by Council's Heritage Advisor who raised no objection to the proposed subdivision and agreed with the conclusions of the provided Heritage Impact Statement.

5(d) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

IWCDCP2016	Compliance
Section 1 – Preliminary	
B – Notification and Advertising	Yes
Section 2 – General Guidelines	
A – Miscellaneous	
1 - Site and Context Analysis	Yes
8 - Parking	Yes – Existing
9 - Subdivision	Yes
15 - Stormwater Management	Yes – Subject to conditions
B – Public Domain	
E1 – Heritage items and Conservation Areas (excluding Haberfield)	
1 – General Controls	Yes
3 – Heritage Conservation Areas (HCAs)	Yes

The following provides discussion of the relevant issues:

5(e) 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(f) 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(g) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. 2 submissions were received in response to the initial notification.

The submissions raised the following concerns which are discussed under the respective headings below:

Issue: Owner's consent has not been obtained

Comment: The current application has been submitted in accordance with the EP&A regulations 2021, with the applicant declaring (via the planning portal) that relevant owner's consent has been obtained. Further to this the submitted DA form includes the strata seal stamped within the owner's consent section. The proposal is considered to have sufficiently outlined that owner's consent for the proposal has been obtained.

Issue: No consultation with the exiting strata committee

Comment: Requirements on consultation with strata committee for DA lodgement are not a consideration in the application assessment. The proposal is accompanied by the relevant owners consent and has been notified in accordance with Council's notification policy.

Issue: Financial impacts due to works associated with subdivision

Comment: Financial Impacts are not a matter of consideration under the EP&A Act 1979 and are to be discussed/resolved privately between the relevant parties.

Issue: Existing Uses for Residential Flat Building (Confirmation it may continue to operate as one)

Comment: An assessment of the residential flat buildings existing use has been undertaken above. It is considered that the building does benefit from existing use rights.

Issue: Non-compliances with controls

Comment: An assessment on the proposal's non-compliances has been undertaken above. The existing RFB is benefited with existing use rights, as such current planning provisions are not applicable. The dwelling house will continue to generally comply with the provisions of CIWDCP 2016 and is acceptable. It is noted that the two uses have been operating independently from each other since 2009 and as such the formalisation of subdivision into separate lots is unlikely to alter the current operation of these premises.

5(h) 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 the following internal sections/officers and issues raised in those referrals have been discussed in section 5 above.

- Heritage – No objection to the proposal. The proposal is considered to be acceptable as lodged and the recommendations of the Heritage Impact Statement supported.
- Development Engineering – No objection to the proposal subject to compliance with appropriate conditions of consent. These conditions relate to stormwater requirements and registration of stormwater easements.

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are not payable for the proposal.

The carrying out of the development would not result in an increased demand for public amenities and public services within the area. The proposed lots to be created already have an existing dwelling and residential flat building located upon them and are not intensified or increased under the current application.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Ashfield Local Environmental Plan 2013* and Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

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 Section 4.6 of the *Inner West Ashfield 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 and Floor Space Ratio standards are 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/2022/0421 for Torrens Title Subdivision of the existing site and amend SP 60270 to create a new Torrens Title lot fronting Herbert Street comprising a dwelling house (Lot 1) and a new lot fronting Old Canterbury Road comprising of a residential flat building (Lot 2) at 220-222 Old Canterbury Road, Summer Hill 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
Sheet No. 01	Proposed Subdivision Plan	Feb 2021	Alexander Jankov Design Studio
21P29_DA_C100 Rev 01	Stormwater Subdivision Plan	04/03/2022	Henry & Hymas Consulting Engineers

As amended by the conditions of consent.

GENERAL CONDITIONS

2. Standard Street Tree Protection

Prior to the commencement of any work, the Certifying Authority must be provided with details of the methods of protection of all street trees adjacent to the site during demolition and construction.

3. Works Outside the Property Boundary

This development consent does not authorise works outside the property boundaries on adjoining lands.

PRIOR TO CONSTRUCTION CERTIFICATE**4. Dilapidation Report – Pre-Development – Minor**

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.

5. Stormwater Drainage System – Minor Developments (OSD is not required)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. The design must generally be in accordance with the Stormwater Subdivision Plan on Drawing No. 21P29_DA_C100 prepared by Henry & Hymas and dated 4 march 2022, as amended to comply with the following;
- b. Separate drainage should be provided for the lots;
- c. The stormwater pipes should be located in the middle of the Easement to Drain Water. The pipes , pits and grate sizes and levels shall be shown on the stormwater plans;
- d. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of a public road;
- e. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- f. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm event. Major event surface flow paths must be designed to cater for the one hundred (100) year ARI Storm;
- g. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than to drain downpipes to the rainwater tank(s);
- h. The design plans must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- i. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;
- j. No nuisance or concentration of flows to other properties;
- k. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- l. The design plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required;

- m. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- n. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- o. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm;
- p. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings; and
- q. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;

6. Sydney Water – Tap In

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92

DURING DEMOLITION AND CONSTRUCTION

7. Construction Hours – Class 1 and 10

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5:00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

PRIOR TO OCCUPATION CERTIFICATE

8. Protect Sandstone Kerb

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any stone kerb, damaged as a consequence of the work that is the subject of this development consent, has been replaced.

9. Splay

Prior the issue of an Subdivision Certificate, the Principal Certifier must be provided with evidence which establishes that a plan of subdivision has been registered with NSW Land and Registry Services which results in the following splay:

- (i) If the existing splay land at the north-eastern corner of the site is not already dedicated to Council, it shall be formally dedicated to Council.

10. Torrens Title Subdivision

Prior to the issue of an Occupation Certificate, 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**11. 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.

12. Subdivision Plan Amendment

Prior to the issue of a Subdivision Certificate, the Principal Certifier must verify that:

- a. A common drainage easement in favour of the parcel of land to be drained must be created over the full length of all existing and proposed inter-allotment drainage systems within the site of the proposed development; and
- b. Proof of registration of the easement and a written statement signed by the Registered Surveyor that the as-built pipeline is totally within the proposed easement.

13. Civil Engineer Verification

Prior to the issue of a Subdivision Certificate, the Principal Certifier must be provided with written verification from a suitably experienced / Chartered/Registered 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), stating that all stormwater drainage and related work has been and constructed in accordance with the approved plans.

14. 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.

15. 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.

ADVISORY NOTES**Permits**

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the *Local Government Act 1993* and/or Section 138 of the *Roads Act 1993*. Permits are required for the following activities:

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip Bins;
- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street veranda over the footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.

Insurances

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover

of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within clause 98-98E of the *Environmental Planning and Assessment Regulations 2021*.

Notification of commencement of works

At least 7 days before any demolition work commences:

- a. The Council must be notified of the following particulars:
 - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
 - ii. the date the work is due to commence and the expected completion date; and
- b. A written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

Storage of Materials on public property

The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.

Infrastructure

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be undertaken before occupation of the site.

Other Approvals may be needed

Approvals under other acts and regulations may be required to carry out the development. It is the responsibility of property owners to ensure that they comply with all relevant legislation. Council takes no responsibility for informing applicants of any separate approvals required.

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.

Other works

Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Obtaining Relevant Certification

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):

- a. Application for any activity under that Act, including any erection of a hoarding;
- b. Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*;
- c. Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*;
- d. Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed;
- e. Application for Strata Title Subdivision if strata title subdivision of the development is proposed;
- f. Development Application for demolition if demolition is not approved by this consent;
or
- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

National Construction Code (Building Code of Australia)

A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out. All building works approved by this consent must be carried out in accordance with the requirements of the National Construction Code.

Disability Discrimination Access to Premises Code

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's

determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

Notification of commencement of works

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the PCA (not being the council) has given the Council written notice of the following information:

- a. In the case of work for which a principal contractor is required to be appointed:
 - i. The name and licence number of the principal contractor; and
 - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
- b. In the case of work to be done by an owner-builder:
 - i. The name of the owner-builder; and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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.

Permits from Council under Other Acts

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the *Local Government Act 1993* and/or Section 138 of the *Roads Act 1993*. Permits are required for the following activities:

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip bins;
- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street verandah over footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. A lease fee is payable for all occupations.

Noise

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.

Amenity Impacts General

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

Fire Safety Certificate

The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:

- a. Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
- b. Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Statement for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Statement must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

Dial before you dig

Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.

Useful Contacts

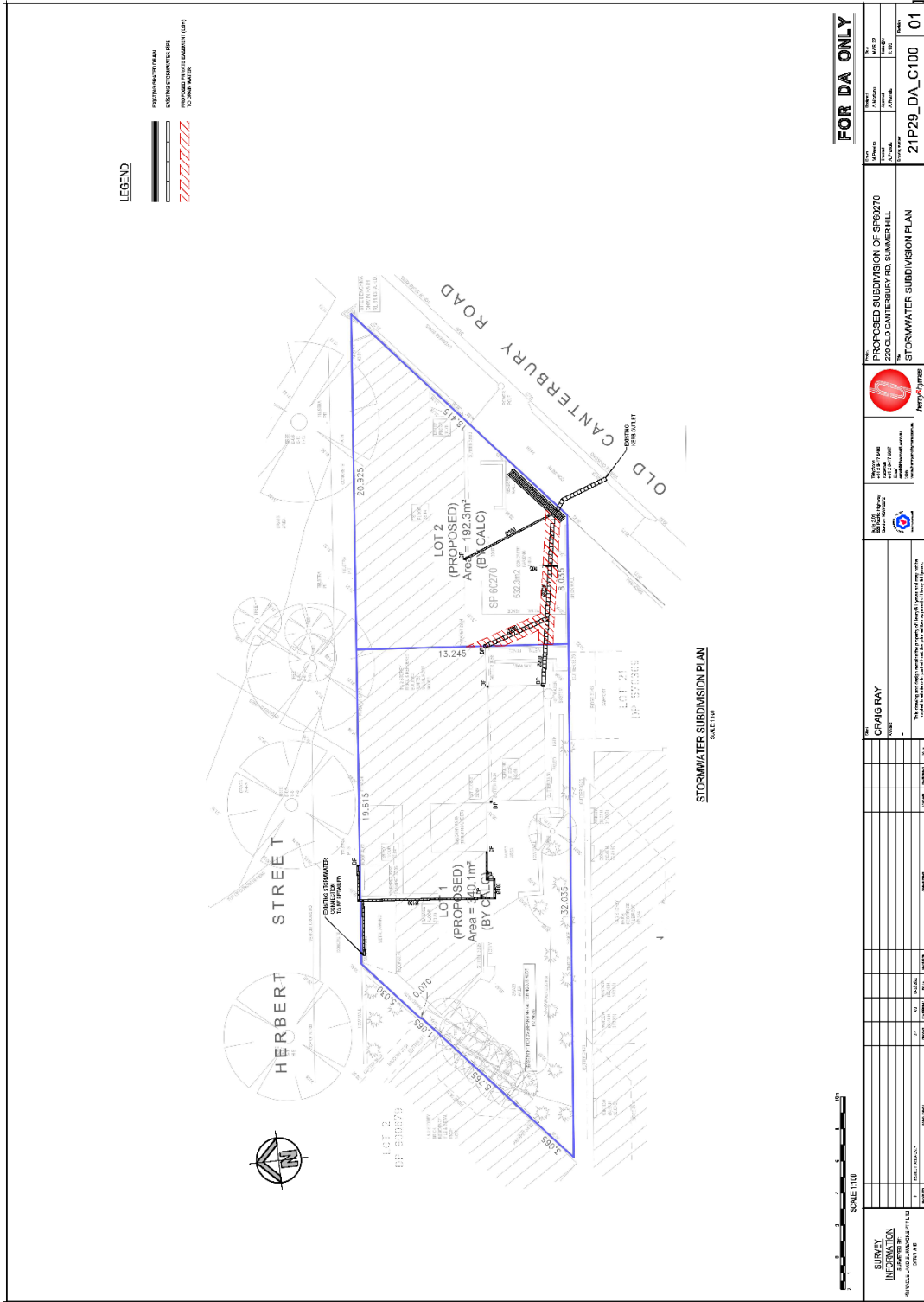
BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au

		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

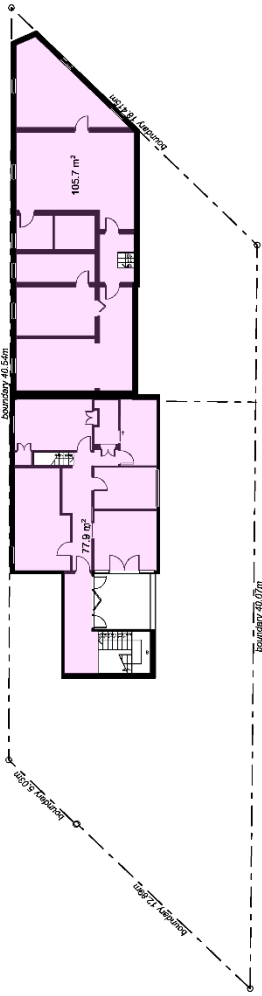
If any new street numbers or change to street numbers (this includes unit and shop numbers) are required, a separate application must be lodged with and approved by Council's GIS Team before being displayed.



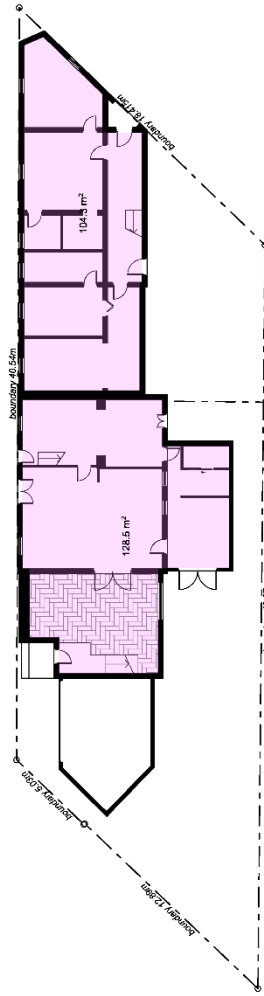
Legend:



Area Calculation	
Site Area	532.4m ²
Plant	15.0m ²
Roof	183.0m ²
Total	730.4m²
Dwellings	
Ground	128.6m ²
First	77.9m ²
Total	206.5m²
FSR	0.61:1
Plot	
Ground	104.3m ²
First	105.0m ²
Total	209.3m²
FSR	1.1:1



Areas - First Floor
SCALE 1:200



Areas - Ground Floor
SCALE 1:200



ARCHITECTURE
SPECTRUM
Spectrum Architecture Pty Ltd
Suite 205, Level 20, Westpac Tower 77, A'ahi, 455 Pitt St, Sydney NSW 2000
Phone: 02 9250 1234 Fax: 02 9250 1235
www.spectrumarch.com.au
Document Set ID: 388959649
Version: 1, Version Date: 04/10/2022

REVISION
A
30.05.2022
DA Issue to council

PROJECT
#Project Description
220 Old Centenary Road, Summer Hill
#Client Full Name
220 Old Centenary Road, Summer Hill

SHEET TITLE
Area Calculations
SCALE 1:500 @ A3
DRAWN: JOURNAL
SHEET NO: A3 DA03 a
REVISION

Attachment C- Section 4.6 Exception to Development Standards



220 Old Canterbury Road, Summer Hill

**REQUEST FOR VARIATION TO MINIMUM SUBDIVISION LOT SIZE
DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF ASHFIELD
LEP 2013**

This Clause 4.6 variation relates to a proposal for Torrens Title Subdivision to allow for Lot 1 fronting Herbert Street (dwelling house) and Lot 2 fronting Old Canterbury Road (residential flat building) on the subject site. No building works are proposed.

Clause 4.1 – Minimum Subdivision Lot Size

Clause 4.1 of Ashfield LEP 2013 requires a minimum subdivision lot size of 500m².

It is proposed to subdivide the existing site and amend SP 60270 to create a new Torrens Title lot fronting Herbert Street comprising of a dwelling house (Lot 1) and a new lot fronting Old Canterbury Road comprising of a residential flat building (Lot 2). No building works are proposed.

The proposed subdivision will result in the following lot sizes:

- Lot 1 – 339.8m²
- Lot 2 – 192.5m²

The proposed lots provide a non-compliance with the minimum subdivision lot size development standard. The percentage variation is as follows:

- Lot 1 – 32% (160.2m²)
- Lot 2 – 61.5% (307.5m²)

The proposal therefore seeks to vary the minimum subdivision lot size development standard.

Suite 203 | 59 Great Buckingham Street | Redfern | NSW 2016
telephone: 02 9360 0989 | www.a2p.com.au

The objectives of Clause 4.1 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 zoning of the land is R2 Low Density Residential. The objectives of the R2 zone are:

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

Clause 4.6 - Exceptions to Development Standards

Clause 4.6 of the Ashfield Local Environmental Plan 2013 allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

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

The clause goes on to state:

- (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:

- (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) *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.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's breach of the minimum subdivision lot size development standard.

The NSW Department of Planning and Infrastructure (DP&I) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the DP&I's Guide.

Clause 4.6(3)(a)

The proposal is considered against the four matters required to be established under Clause 4.6.

1. Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:

In order to assess whether strict compliance with the development standard is unreasonable or unnecessary, a proposal is considered against the following five ways¹:

¹ see *Wehbe v Pittwater Council* [2007] NSWLEC 827



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

These five ways were re-emphasised by Commissioner Morris². Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance³. All tests are separate and not all tests may not be applicable in each case. Therefore, not all tests need to be met.

This objection relies on the first method set out above, that compliance with a standard is unreasonable and unnecessary given that the objectives of the standard are met even though the standard is not complied with⁴.

Compliance with the objectives of the minimum subdivision lot size standard is addressed under **Point 4 below**.

The following points are raised:

- The subdivision pattern in the surrounding area is identified as of varied allotment sizes and shapes. The proposed subdivision is therefore consistent with the surrounding lot pattern and enables the subsequent development of buildings that are consistent with existing or desired future streetscape character.
- The Heritage Impact Statement prepared by John Oultram Heritage & Design submitted with the application states the following in regard to the proposed subdivision:

² *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386

³ *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312

⁴ *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245

“Internally, the two sections are divided with a party wall and there is no internal or external connection between the two parts. The line of subdivision is sensibly set on the line of the party wall and reflects the current arrangement and division of the dwelling and apartments.

The proposals involve no built works and the subdivision will have no apparent impact on the property and will have no impact on its known, historical significance.”

- As demonstrated in the Concept Building Envelope Plan, the proposed new lots have sufficient area and dimensions to be useable for their intended future use.
- The Concept Building Envelope Plan submitted with the application demonstrates that potential future development on proposed Lot 1 and Lot 2 can be built that complies with the building height, FSR, storey height, external wall height, front setback, side setbacks, parking spaces, parking location, landscaped area, site coverage and private open space controls. This ensures that future development on the proposed lots would not result in unreasonable amenity impacts on the adjoining properties in terms of overshadowing, visual bulk and privacy.
- The proposed subdivision will not alter the existing development. The lot size non-compliance will not be visible from the streetscape and will be indiscernible from surrounding properties.
- The proposal does not include any building works. The proposal will retain the existing buildings on the site. The bulk and scale of the existing development on the proposed new lots is therefore of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality.
- The proposed dwelling on the site is permissible with consent. The existing residential flat building on the site operates by virtue of existing use rights. The proposed subdivision is therefore more in keeping with the zoning.

Clause 4.6(3)(b)

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

Given the consistency of the proposal against the zone objectives and minimum subdivision lot size objectives (see **Point 4 below regarding both**),



in my opinion there are sufficient environmental planning grounds to justify contravening the development standard⁵.

The components proposed above the minimum subdivision lot size control are:

- Lot 1 – 339.8m²
- Lot 2 – 192.5m²

There are sufficient environmental planning grounds that the proposed lot size can be achieved without adverse impacts for the following reasons:

- The proposed subdivision is consistent with the surrounding lot pattern and enables the subsequent development of buildings that are consistent with existing or desired future streetscape character.
- The Concept Building Envelope Plan submitted with the application demonstrates that potential future development on proposed Lot 1 and Lot 2 can be built that complies with the building height, FSR, storey height, external wall height, front setback, side setbacks, parking spaces, parking location, landscaped area, site coverage and private open space controls. This ensures that future development on the proposed lots would not result in unreasonable amenity impacts on the adjoining properties in terms of overshadowing, visual bulk and privacy.
- The proposed subdivision will not alter the existing development on the proposed new lots. The lot size non-compliance will therefore not be visible from the streetscape and will be indiscernible from surrounding properties.
- The proposal will retain the existing buildings on the site. The bulk and scale of the existing development on the proposed new lots is therefore of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality.

The proposal represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).

The aspect of the development that breaches the minimum subdivision lot size control can be justified as the proposal will provide two new lots, which are each capable of accommodating future compliant development. Existing development on each proposed lot is to be retained with no building works.

⁵ see *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [90]



The dwelling house on proposed Lot 1 and the residential flat building on proposed Lot 2 are appropriate in their contexts. These can be described as an environmental planning ground.

The lack of impact on adjoining properties in terms of solar access, privacy, view loss and visual bulk establishes sufficient planning grounds⁶.

Clause 4.6(4)(a)(i)

3. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3):

The written request adequately addresses the matters referred to above by Clause 4.6(3).

Clause 4.6(4)(a)(ii)

4. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out:

Objectives of the Standard

The proposal will be in the public interest as it meets the objectives of the minimum subdivision lot size development standard as follows:

Objective (a) seeks to maintain the existing pattern of subdivision within heritage conservation areas in terms of lot size and lot dimensions,

Comment: The site is located within the Clover Hill Heritage Conservation Area (C43).

The subdivision pattern in the surrounding area is identified as of varied allotment sizes and shapes. The proposed subdivision is therefore consistent with the surrounding lot pattern and enables the subsequent development of buildings that are consistent with existing or desired future streetscape character.

The Heritage Impact Statement prepared by John Oultram Heritage & Design submitted with the application states the following in regard to the proposed subdivision:

⁶ *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [94(c) and *Randwick City Council v Micaul Holdings Pty Ltd* at [34]



“Internally, the two sections are divided with a party wall and there is no internal or external connection between the two parts. The line of subdivision is sensibly set on the line of the party wall and reflects the current arrangement and division of the dwelling and apartments.

The proposals involve no built works and the subdivision will have no apparent impact on the property and will have no impact on its known, historical significance.”

A Heritage Impact Statement prepared by John Oultram Heritage & Design concludes the following:

“220 Old Canterbury Road is an interesting example of a late Victoria bakery and residence that retains much of its form and external detail though the rear dwelling has been heavily altered and extended.

The property was divided in 1966 when the eastern section was converted to four apartments and the bakery converted to a dwelling. The dwelling retains evidence of the bakery but the proposals are for subdivision only and no built works are proposed.

The proposals do not involve any built alterations to the property and the subdivision will formalise the built separation that is clearly apparent in the elevations to Herbert Street and to the south and in the change of form, style and materials between the two sections.

In heritage terms, we consider that the proposals should be approved.”

Objective (b) seeks 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,

Comment: As demonstrated in the Concept Building Envelope Plan, the proposed new lots have sufficient area and dimensions to be useable for the existing use and their intended future use.

The Concept Building Envelope Plan submitted with the application demonstrates that potential future development on proposed Lot 1 and Lot 2 can be built that complies with the building height, FSR, storey height, external wall height, front setback, side setbacks, parking spaces, parking location, landscaped area, site coverage and private open space controls. This ensures that future development on the proposed lots would not result in unreasonable amenity impacts on the adjoining properties in terms of overshadowing, visual bulk and privacy.

The proposal does not include any building works. The proposal will retain the existing buildings on the site. The bulk and scale of the existing development on the proposed new lots is therefore of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality.

Objective (c) seeks 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,

Comment: The proposed subdivision is not intended for multi dwelling housing.

The dwelling house on proposed Lot 1 is permissible with consent. The existing residential flat building on the site operates by virtue of existing use rights. The proposed subdivision is therefore more in keeping with the zoning.

Objective (d) seeks to ensure that lot sizes allow development to be sited to protect and enhance riparian land.

Comment: The subject site is not located in the vicinity of riparian land. The proposed new lots will therefore not have an adverse impact on riparian land.

Objectives of the Zone

The zoning of the land is R2 Low Density Residential. The objectives of the R2 zone are:

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

The dwelling house on proposed Lot 1 on the site is permissible with consent. The existing residential flat building on the site operates by virtue of existing use rights. The proposed subdivision is therefore more in keeping with the zoning.

The proposal is consistent with the objectives of the R2 zone as follows:

- The proposal will retain the existing residential use of the site and continue to provide for housing needs in the area.
- The proposal will not inhibit other land uses that provide facilities or services to meet the day to day needs of residents.

As demonstrated above, the proposed development will be in the public interest because it is consistent with the objectives of the minimum subdivision lot size development standard and the objectives of the R2 zone.

In addition, the above demonstrates that compliance with the control is unreasonable and unnecessary in the circumstances of this case.

Clause 4.6(4)(b) and Clause 4.6(5)

Concurrence of the Planning Secretary is taken to have been obtained as a result of written notice dated 5 May 2020 attached to the Planning Circular PS 20-002.

In the context of the requirements of Clause 4.6(5), it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

Conclusion

The consistency of the development with the zone objectives and the objectives of the minimum subdivision lot size standard and the lack of impact arising is sufficient grounds to support that breach and confirms the lack of necessity for the development to comply. This therefore demonstrates sufficient environmental planning grounds to justify contravening the standard.

In addition, the resultant development will be in the public interest as it complies with the objectives of the zone and the objectives of the development standard.

Despite the breach with the standard, the proposal is consistent with the objects of Section 1.3 of the EP& A Act, 1979, which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land.

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to support the variation.



Clare Findlay
Consultant Town Planner
aSquare Planning Pty Ltd

Date: 23 March 2022





220 Old Canterbury Road, Summer Hill

REQUEST FOR VARIATION TO FLOOR SPACE RATIO DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF ASHFIELD LEP 2013

This Clause 4.6 variation relates to a proposal for Torrens Title Subdivision to allow for Lot 1 fronting Herbert Street (dwelling house) and Lot 2 fronting Old Canterbury Road (residential flat building) on the subject site. No building works are proposed.

Clause 4.4 – Floor Space Ratio

Clause 4.4 of the Ashfield LEP 2013 and the associated map prescribe a maximum floor space ratio (FSR) of 0.5:1 for this site.

The proposed subdivision will result in the following lot sizes:

- Lot 1 – 339.8m²
- Lot 2 – 192.5m²

The proposed lots will be subject to the following FSR control:

- Lot 1 – 0.5:1 being 169.9m²
- Lot 2 – 0.5:1 being 96.25m²

The existing development on the proposed new lots result in the following FSRs:

- Dwelling house on proposed Lot 1 – 0.607:1 (GFA: 206.4m²)
- Residential flat building on proposed Lot 2 – 1.09:1 (GFA: 210m²)

The dwelling house on proposed Lot 1 provides a non-compliance with the FSR development standard. The percentage variation is 21.48% (36.5m²).

The residential flat building operates by existing use rights. The residential flat building on proposed Lot 2 provides a non-compliance with the FSR development standard. The percentage variation is 118.18% (113.75m²).

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The existing site (532.3m²) is subject to a FSR control of 0.5:1, equating to a GFA of 266.15m². The existing development has a total floor area of 416.4m² equating to a FSR of 0.782:1. This provides a non-compliance with the FSR control. The percentage variation is 56.45% (150.25m²).

The proposal therefore seeks to vary the FSR development standard.

The objectives of Clause 4.4 are as follows:

- (a) to establish standards for development density and intensity of land use,*
- (b) to provide consistency in the bulk and scale of new development with existing development,*
- (c) to minimise adverse environmental impacts on heritage conservation areas and heritage items,*
- (d) to protect the use or enjoyment of adjoining properties and the public domain,*
- (e) to maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing, and are not likely to undergo, a substantial transformation.*

The zoning of the land is R2 Low Density Residential. The objectives of the R2 zone are:

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

Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the Ashfield Local Environmental Plan 2013 allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

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

The clause goes on to state:

- (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:*
- (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) *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.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's breach of the FSR development standard.

The NSW Department of Planning and Infrastructure (DP&I) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the DP&I's Guide.

Clause 4.6(3) and 4.6(4)

The proposal is considered against the four matters required to be established under Clause 4.6.

1. Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:

In order to assess whether strict compliance with the development standard is unreasonable or unnecessary, a proposal is considered against the following five ways¹:

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

These five ways were re-emphasised by Commissioner Morris². Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance³. All tests are separate and not all tests may not be applicable in each case. Therefore, not all tests need to be met.

This objection relies on the first method set out above, that compliance with a standard is unreasonable and unnecessary given that the objectives of the standard are met even though the standard is not complied with⁴.

Compliance with the objectives of the FSR standard is addressed under **Point 4 below**.

¹ see *Wehbe v Pittwater Council* [2007] NSWLEC 827

² *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386

³ *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312

⁴ *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245

The following points are raised:

- The proposed dwelling on the site is permissible with consent. The existing residential flat building on the site operates by virtue of existing use rights. The proposed subdivision is therefore more in keeping with the zoning.
- The proposal does not include any building works. The proposal will retain the existing built form on the proposed new lots.
- As demonstrated on the Concept Building Envelope Plan submitted with this application, future development on proposed Lot 1 and Lot 2 can comply with the 0.5:1 FSR development standard, should existing development be demolished.
- Compliance with the development standard is unreasonable and unnecessary as the proposal does not include any building works. The proposal will retain the existing buildings on the site. The building height and bulk of the existing development on the proposed new lots is therefore of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality.
- As demonstrated in this SEE, the existing dwelling on proposed Lot 1 complies with the storey height, external wall height, site coverage and private open space controls. It is noted that the residential flat building does not comply with the DCP controls, however it is reiterated that the residential flat building operates by existing use rights and therefore the DCP controls do not apply.
- The Concept Building Envelope Plan submitted with the application demonstrates that potential future development on proposed Lot 1 and Lot 2 can be built that complies with the building height, FSR, storey height, external wall height, front setback, side setbacks, parking spaces, parking location, landscaped area, site coverage and private open space controls.
- Considering that the proposal will retain the existing built form on the site, the proposal will not result in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity.

- The FSR non-compliance relates to the existing development on the proposed new lots and will therefore not be visible from the streetscape and will be indiscernible from surrounding properties.

Clause 4.6(3)(b)

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

Given the consistency of the proposal against the zone objectives and FSR objectives (see **Point 4 below regarding both**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard⁵.

The components proposed above the FSR control are:

- Existing dwelling house on proposed Lot 1 – 36.5m²
- Existing residential flat building on proposed Lot 2 – 113.75m²

There are sufficient environmental planning grounds which demonstrate that the proposed FSR can be achieved without adverse impacts for the following reasons:

- The proposal will not result in the loss of views from surrounding development;
- The proposal will not result in unreasonable overshadowing of adjoining properties;
- The proposal will ensure that the visual and acoustic privacy of adjoining properties is maintained;
- The proposal is consistent with the scale of the adjoining developments and is of an appropriate visual bulk for the locality; and
- The FSR non-compliance relates to the existing development on the proposed new lots and is a consequence of the proposed subdivision and will therefore not be visible from the streetscape and will be indiscernible from surrounding properties.

The proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section

⁵ see *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [90]

1.3 of the EP&A Act, 1979). The building envelope and design of the proposal responds appropriately to the unique opportunities and constraints of the site.

The aspect of the development that breaches the FSR control can be justified as the proposal provides a consistent scale with neighbouring development. This can be described as an environmental planning ground because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome⁶.

Existing development on each proposed lot is to be retained with no building works. The dwelling house on proposed Lot 1 and the residential flat building on proposed Lot 2 are appropriate in their contexts. These can be described as an environmental planning ground.

Reduction in the FSR will not result in improved amenity for adjoining properties. The lack of impact on adjoining properties in terms of solar access, privacy, view loss and visual bulk establishes sufficient planning grounds⁷.

Clause 4.6(4)(a)(i)

3. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3):

The written request adequately addresses the matters referred to above by Clause 4.6(3).

Clause 4.6(4)(a)(ii)

4. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out:

Objectives of the Standard

The proposal will be in the public interest as it meets the objectives of the FSR development standard as follows:

⁶ *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 1097 at [42]

⁷ *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [94(c)] and *Randwick City Council v Micaul Holdings Pty Ltd* at [34]

Objective (a) seeks to establish standards for development density and intensity of land use,

Comment: As demonstrated on the Concept Building Envelope Plan submitted with this application, future development on proposed Lot 1 and proposed Lot 2 can comply with the 0.5:1 FSR development standard.

Objective (b) seeks to provide consistency in the bulk and scale of new development with existing development,

Comment: The proposal does not include any building works. The proposal will retain the existing buildings on the site. The building height and bulk of the existing development on the proposed new lots is therefore of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality.

Objective (c) seeks to minimise adverse environmental impacts on heritage conservation areas and heritage items,

Comment: The buildings on the subject site are not identified as a Heritage Item. The site is located within the Clover Hill Heritage Conservation Area (C43) and is within the vicinity of the following Heritage items:

- I528 – School building at Junction Road (between Moonbie and Bartlett Streets)
- I585 - semi-detached buildings— former shops with dwellings above at 212–214 Old Canterbury Road
- I564 – House at 90 Moonbie Street

A Heritage Impact Statement prepared by John Oultram Heritage & Design is submitted with the application. The Heritage Impact Statement concludes the following:

“220 Old Canterbury Road is an interesting example of a late Victoria bakery and residence that retains much of its form and external detail though the rear dwelling has been heavily altered and extended.

The property was divided in 1966 when the eastern section was converted to four apartments and the bakery converted to a dwelling. The dwelling retains evidence of the bakery but the proposals are for subdivision only and no built works are proposed.

The proposals do not involve any built alterations to the property and the subdivision will formalise the built separation that is clearly

apparent in the elevations to Herbert Street and to the south and in the change of form, style and materials between the two sections.

In heritage terms, we consider that the proposals should be approved."

Objective (d) seeks to protect the use or enjoyment of adjoining properties and the public domain,

Comment: Considering that the proposal will retain the existing built form on the site, the proposal will not result in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity.

Objective (e) seeks to maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing, and are not likely to undergo, a substantial transformation.

Comment: The proposal does not include any building works. The proposal will retain the existing buildings on the site. The existing development on the proposed new lots are therefore of an appropriate form and scale and is compatible with the existing character for the area.

Objectives of the Zone

The zoning of the land is R2 Low Density Residential. The objectives of the R2 zone are:

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

The existing dwelling on the site is permissible with consent. The existing residential flat building on the site operates by virtue of existing use rights.

The proposed subdivision is therefore more in keeping with the zoning as it will allow for a permissible use (dwelling) to be provided Lot 1.

The proposal is consistent with the objectives of the R2 zone as follows:

- The proposal will retain the existing residential use of the site and continue to provide for housing needs in the area.
- The proposal will not inhibit other land uses that provide facilities or services to meet the day to day needs of residents.

As demonstrated above, the proposed development will be in the public interest because it is consistent with the objectives of the FSR development standard and the objectives of the R2 zone.

The above demonstrates that compliance with the control is unreasonable and unnecessary in the circumstances of this case.

Clause 4.6(4)(b) and Clause 4.6(5)

Concurrence of the Planning Secretary is taken to have been obtained as a result of written notice dated 5 May 2020 attached to the Planning Circular PS 20-002.

In the context of the requirements of Clause 4.6(5), it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

Conclusion

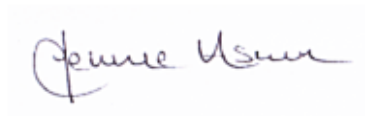
The consistency of the development with the zone objectives and the objectives of the FSR standard together with the absence of adverse impacts arising establish that there are sufficient grounds to support the variation from the development standard and confirm that it is unreasonable and unnecessary for the development to comply. This therefore demonstrates sufficient environmental planning grounds to justify contravening the standard.

In addition, the resultant development will be in the public interest as it complies with the objectives of the zone and the objectives of the development standard.

Despite the breach with the standard, the proposal is consistent with the objects of Section 1.3 of the EP& A Act, 1979, which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land, to promote good design and amenity of the built environment and to protect the heritage of the built environment.

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case

and there are sufficient environmental planning grounds to support the variation.

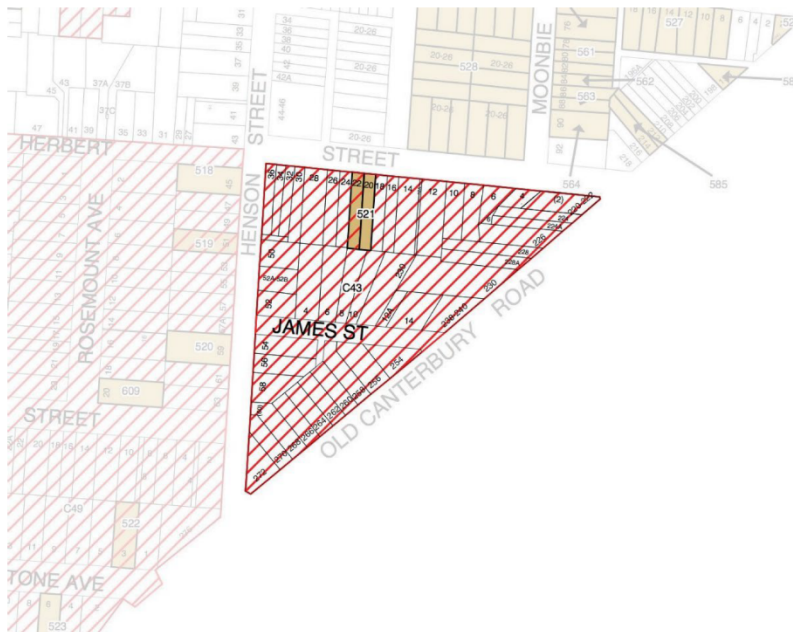


Jennie Askin
Director
aSquare Planning Pty Ltd

Date: 30 September 2022

Attachment D – Statement of Heritage Significance

C43 Clover Hill, Summer Hill Heritage Conservation area



KEY PERIOD OF SIGNIFICANCE: 1877-1930s

**HCA TYPE 3: MIXED RESIDENTIAL
STATEMENT OF SIGNIFICANCE**

The Clover Hill Heritage Conservation Area is of *local* heritage significance.

The area is of *historical* significance as an area subdivided and developed from 1877 as the Clover Hill Estate.

The area has *historical association* with local entrepreneur James Bartlett (who had the nearby “Prospect Hall” built as his residence).

The area is of *aesthetic* significance arising from its 1877 subdivision and subsequent development with a mix of detached and semi-detached late Victorian, Federation and Inter-war housing styles, one and two storeys, with generally consistent setbacks allowing for small front gardens. The area is of aesthetic significance for its mix of buildings with architectural styles reflecting the period of development, including Victorian Filigree, Victorian Georgian, Victorian Italianate, Federation Queen Anne, Inter-war California Bungalow, 1930s bungalows, Inter-war Art Deco residential flat buildings.

While predominantly brick (Federation, Inter-war period housing) or rendered brick (Victorian period housing) the area’s housing also includes weatherboard houses constructed during the area’s key period of significance, which are part of the historic mix of housing.

The pre-1943 brush box street tree plantings in Herbert Street add to the aesthetic significance of the Herbert Street streetscape.

KEY CHARACTER ELEMENTS

Subdivision and public domain elements:

- Varied allotment sizes and shapes
- Pre-1943 Brush box street tree plantings within the road verge in Herbert Street

Elements that contribute to the consistency of the streetscape (visible from the public domain)

- Mix of one and two-storey detached and semi-detached housing (with the exception of 52 Henson St (2 storey Inter-war period block of units) & 220-222 Old Canterbury Road (2-storey Victorian Italianate style former retail building))
- Variety of architectural styles and periods within the key period of significance including Victorian Filigree, Victorian Georgian, Victorian Italianate, Federation Queen Anne, Inter-war California Bungalow, 1930s bungalows, Inter-war Art Deco residential flat buildings
- Predominantly brick housing (Federation, Inter-war period) mixed with (Victorian period) rendered brick and weatherboard housing
- Original roof forms and cladding (slate, unglazed terracotta, corrugated steel)
- Generally consistent setbacks from the street which allow for small front gardens
- Details and elements consistent with period and styles of housing including verandah detailing
- Front fences, generally low brick or timber picket, consistent with periods and styles of housing.

NON-CONTRIBUTORY ELEMENTS

- Cement rendering or painting of brickwork to Federation and Inter-war period housing (examples No. 50 Henson Street, 224-224A Old Canterbury Road, 258 Old Canterbury Road)
- Removal of original detailing including windows (for example 50 Henson Street)
- Unsympathetic alterations to front verandahs (example 50 Henson Street)
- Over-large dormer windows (6 Herbert Street)
- Modern roof claddings (eg. concrete roof tiles to 18 Herbert Street) and sometimes loss of separate verandah or balcony roofs (eg No. 30 and 32 Herbert St)
- Industrial area in James Street and New Canterbury Road (recommended for excision from the HCA)

HISTORICAL DEVELOPMENT

Edward Haven was granted 25 acres of land covering this area in 1794. He sold the land to John Palmer, who sold on to Robert Campbell, and Campbell incorporated it into his large Canterbury Park Estate. Part of it was later sold to James Bartlett, the Summer Hill entrepreneur, in 1869.

Bartlett created the Clover Hill Estate, comprising 28 numbered allotments and one unnumbered one. Their sale, arranged by Richardson & Wrench on behalf of Bartlett, began on 26 May 1877.

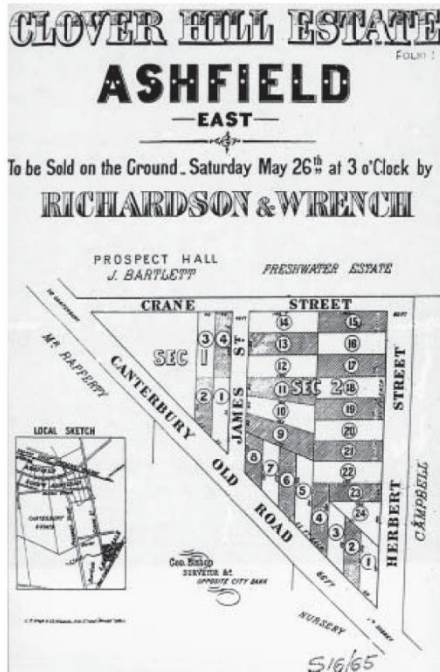
James Bartlett’s entrepreneurial activities in Ashfield were numerous and interesting. Born in England, probably in London, he came to Summer Hill as a widower in 1869 and later remarried. James Bartlett died in April 1904 survived by two married daughters, leaving an estate of “under 45,000 pounds”¹.

Among other developments including this one he was responsible for the Tavistock Estate (centred on the north end of Morris Street), the Fleet Street Estate, and the Trafalgar Square Estate. The Summer Hill Primary School is built on land that was formerly his, while Bartlett Street, where he also owned and built houses, was named after him.

He must have been a little sentimental too, for he named Fleet Street, Tavistock and Trafalgar Square after London places². Bartlett lived in his house ‘Prospect Hall’, which was located in what is now the Prospect Hall Conservation Area, across the other side of Henson Street from Clover Hill.

The smaller triangle of land south of James Street (Section 1 of the 1877 subdivision, containing four numbered allotments and the unnumbered one) was re-subdivided as the ‘St Andrews Estate, Summer Hill Heights’, comprising 13 allotments. They were advertised for sale by auction on 23 September 1905, by Raine & Home, in conjunction with C H Crammond. The 1905 layout of that corner is substantially the one that exists today³.

¹ Late Mr. J. Bartlett’s Will, article in the Evening News, Sydney, 1 June 1904 page 6
² Information from Ashfield & District Historical Society; Ashfield Heritage Study 1993, vol 1, p 164; Sheena and Robert Coupe, Speed the Plough, p 111. Ann O’Connell, ‘Branxton’—Still Hedging Along’, in Chris Pratten (ed) Summer Hill, pp 143-150. See also the Higinbotham & Robinson map of Ashfield, 1883. The Richardson & Wrench subdivision plan is No S16/65, held in Ashfield Council Archives.
³ Subdivision Plan No S16/75 in Ashfield Council Archives; H E C Robinson map of Ashfield, east ward, undated but about 1912



Left: Reproduction of the 1877 plan of subdivision of the Clover Hill Estate for sale in 1877. Section 1, in the left corner, was re-subdivided in 1905 and remains essentially in that arrangement today

Chapter E1 – Heritage Items and Conservation Areas
Part 9 – Heritage Conservation Areas Character Statements and Rankings