

INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2023/0300
Address	197-199 Alt Street HABERFIELD
Proposal	Torrens title subdivision of site into two (2) lots
Date of Lodgement	28 April 2023
Applicant	Inveresk Pty Ltd
Owner	Inveresk Pty Ltd
Number of Submissions	0
Value of works	\$60,000
Reason for determination at Planning Panel	Section 4.6 variation exceeds 10%
Main Issues	Minimum lot size
Recommendation	Deferred commencement
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	Nil		↑ N
Notified Area		Supporters	Nil		

1.

1. Executive Summary

This report is an assessment of the application submitted to Council for Torrens title subdivision of the site into two (2) lots at 197-199 Alt Street, Haberfield.

The application was notified to surrounding properties and 0 submissions were received in response to the initial notification.

The main issue that has arisen from the application is that the proposed lots are less than the minimum 500sqm lot size prescribed in Section 4.1 of the Inner West LEP 2022.

A Clause 4.6 request to vary a development standard has been provided by the applicant. It is considered that the variation is justified in this instance for the reasons discussed in this report.

The application is recommended for a deferred commencement approval.

2. Proposal

Torrens title subdivision of an existing dual occupancy into two lots.

Associated Building Code of Australia (BCA) upgrade works including:

- Upgrade existing separating wall to create complaint fire protected party wall, and
- Increase height of balustrades on the front porches to 1m.

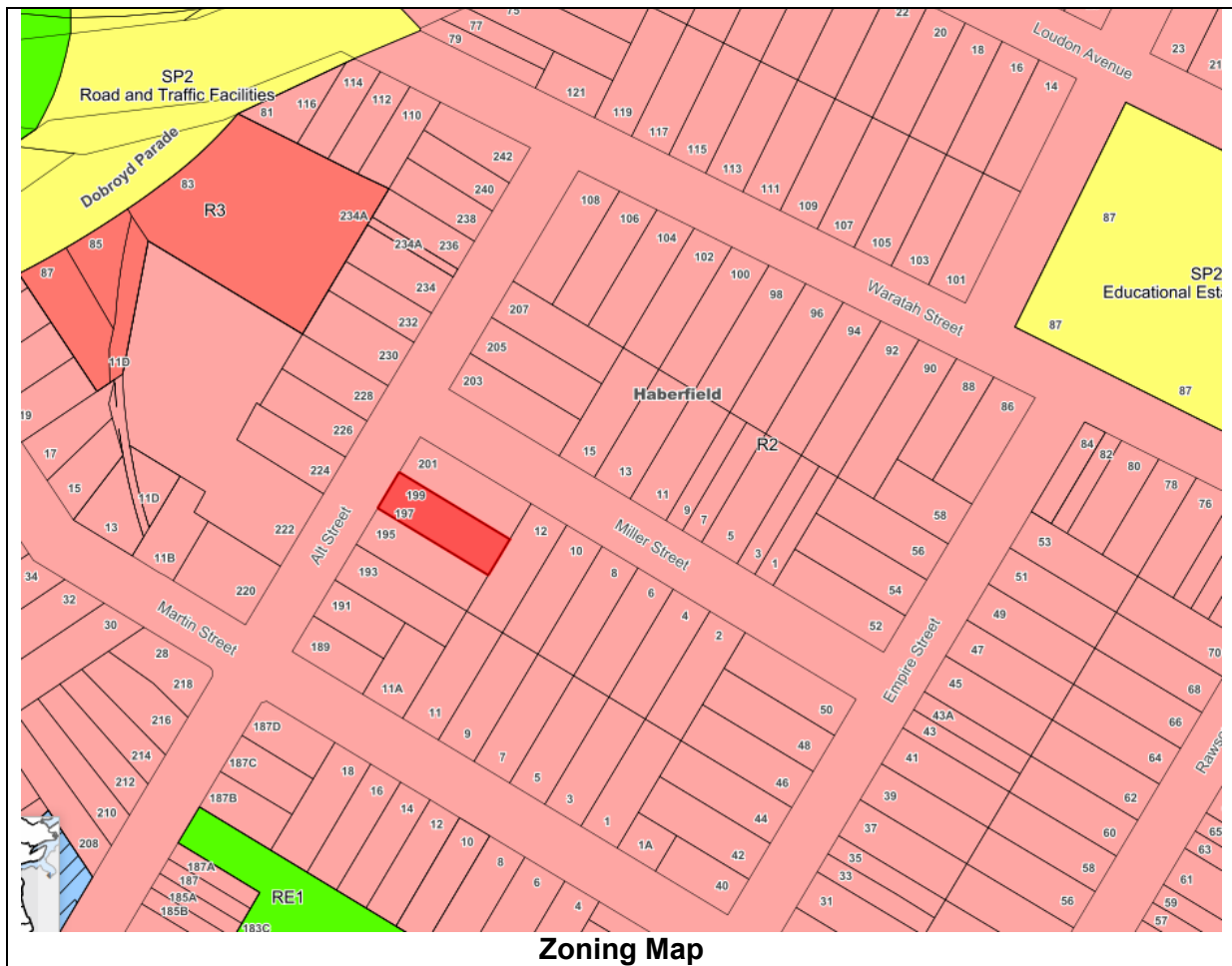
3. Site Description

The subject site is located on the eastern side of Alt Street, between Miller Street and Martin Street. The site consists of one allotment and is generally rectangular shaped with a total area of area 720.8sqm and is legally described as Lot 197 in DP 4960, 197–199 Alt Street, Haberfield.

The site has a frontage to Alt Street of 15.24 metres. The site is not affected by any known easements.

The site supports a single storey dual occupancy building containing two dwellings separated by a brick common wall. The adjoining properties support single storey free standing brick dwelling houses.

The property is located within Haberfield Heritage Conservation Area. The property is not identified as a flood prone lot.



4. Background

4(a) Site history

A search of Council records could not locate the original approved building application for the existing dual occupancy, most likely given the age of the building. However, based on the limited history provided by the applicant and the Federation style of the building, it is likely the building dates from around 1920. It can be assumed that the building is part of the original subdivision.

4(b) Application history

There is no relevant application history.

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 (Housing) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 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 4.6 (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.

A search of Council's records in relation to the site has not indicated that the site is one that is specified in Section 4.6 (4)(c).

A search of Councils records does not indicate any knowledge or incomplete knowledge of uses listed within Table 1 of the contaminated land planning guidelines. It would have been unlawful to carry out development of a type listed in within Table 1 of the contaminated land planning guidelines for the period in which there is no knowledge (or incomplete knowledge).

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

5(a)(ii) State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 10 Sydney Harbour Catchment

The site is not located within the foreshores and waterways area, a Strategic Foreshore site or listed as an item of environmental heritage under the SEPP and as such only the aims of the plan are applicable. The proposal is consistent with these aims.

5(a)(iii) Inner West Local Environmental Plan 2022 (IWLEP 2022)

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022*:

- 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 4.4 – Floor space ratio
- Section 4.6 – Exceptions to development standards

- Section 5.10 – Heritage conservation
- Section 6.3 – Stormwater management
- Section 6.4 – Terrestrial biodiversity
- Section 6.20 – Development on land in Haberfield Heritage Conservation Area

Section 2.3 Land Use Table and Zone Objectives

The site is zoned R2 under the *IWLEP 2022*. The proposed Torrens title subdivision will change the existing building from a **dual occupancy** (which is a prohibited use in the zone) to a **semi-detached dwelling** “[which] means a dwelling that is on its own lot of land and is attached to only one other dwelling”.

Semi-detached dwellings are permitted with consent within the land use table and the development is considered 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 Minimum permissible: 500 sqm	Lot 1, 199 Alt Street 363.2 sqm Frontage 7.66m	136.8sqm or 27%	No
Minimum subdivision lot size Minimum permissible: 500 sqm	Lot 2, 197 Alt Street 359.4sqm Frontage 7.58m	140.6sqm or 28%	No
Height of Buildings Maximum permissible: 7 m	No change	N/A	N/A
Floor Space Ratio Maximum permissible: 0.5:1 Lot 1, 197 Alt Street - 181.2sqm Lot 2, 199 Alt Street – 179.7sqm	Lot 1 – 113sqm or 0.31:1 Lot 2 – 110sqm or 0.31:1	N/A	Yes

Section 4.6 Exceptions to Development Standards

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

- Minimum subdivision lot size

The applicant seeks a variation to the minimum subdivision lot size development standard under Section 4.1 of the *IWLEP 2022* by 27% (136.8 sqm) and 28% (140.6sqm) for Lot 1 and 2 respectively.

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 *IWLEP 2022* below.

A written request has been submitted to Council in accordance with Section 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the development standard which is summarised as follows:

- The development is acceptable on land use and heritage grounds.
- There is established precedent in the locality for the subdivision of existing semi-detached dwellings.
- The existing use is a dual occupancy which is a non-conforming use and the proposal will facilitate a permissible land use (semi-detached dwelling).
- The proposal is consistent with the historic subdivision pattern.

The applicant's written rationale adequately demonstrates compliance with the development standard is unreasonable / 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 development standard and the R2 zone, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

Section 4.1 Minimum subdivision lot size objectives:

- (a) to ensure lot sizes cater for a variety of development,*
- (b) to ensure lot sizes do not result in adverse amenity impacts,*
- (c) to ensure lot sizes deliver high quality architectural, urban and landscape design,*
- (d) to provide a pattern of subdivision that is consistent with the desired future character,*
- (e) to ensure lot sizes allow development to be sited to protect and enhance riparian and environmentally sensitive land.*

Comment:

- The proposal is consistent with the objectives of the development standard for the following reasons:
 - The proposed subdivision caters for a variety of development, namely a semi-detached dwelling.
 - No associated external works are proposed except for increasing the height of the front balustrade, and as such there are no additional adverse amenity impacts and the existing high quality architectural, urban and landscape design is maintained.
 - The proposed pattern of subdivision is consistent with the existing pattern of subdivision for semi-detached dwellings and with the desired future pattern for existing dual occupancy developments within the Haberfield Conservation Area.
 - The site is not located on riparian or environmentally sensitive land.

Zone R2 Low Density Residential objectives:

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

- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

Comment:

- The proposal is consistent with the zone objectives as it maintains a low-density residential environment. Furthermore, the proposal involves no associated external works to the existing building (other than increasing height of the front balustrade) which is considered a contributory item in the Haberfield Conservation Area.

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 *IWLEP 2022*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from minimum subdivision lot size development standard and it is recommended the Section 4.6 exception be granted.

Section 5.10 Heritage conservation

The subject site is located within the Haberfield Heritage Conservation Area.

The following advice was provided from Council’s Heritage Advisor:

- *The proposal to subdivide the property into two lots...is acceptable on heritage grounds.*
- *No changes are to be made to the site to comply with BCA requirements (ie to balustrades, front steps, party wall etc) unless approval has been sought under the heritage planning controls, by ... DA. The existing decorative elements are all to be retained internally and externally and the front façade is to have a consistent presentation to the street (so as to appear as one Federation style house)*

It is noted that the supplied BCA Compliance report has stated that the front verandah balustrades are required to be increased in height to 1m so as to comply with the BCA, and that the separating wall is to be upgraded to provide a fire protected party wall.

To ensure the important heritage fabric of the building is retained, a deferred commencement is recommended requiring that details of the front balustrade and party wall are provided to the satisfaction of Council’s Heritage Advisor. This will ensure that any new work does not compromise the dwellings or HCA.

In light of the discussion above, it is considered that subject to conditions the proposal can be designed to respond to the significance of the building, preserve contributory elements and fabric of the existing building and preserves the environmental heritage of the Inner West

Part 6 – Additional local provisions

Control	Proposed	Compliance
Section 6.1 Acid sulfate soils	The site is identified as containing Class 5 acid sulfate soils. The proposal is considered to adequately satisfy this section as the application does not propose any works that would result in any significant adverse impacts to the watertable.	Yes
Section 6.3 Stormwater	The development maximises the use of permeable surfaces, includes on site retention as an alternative	Yes

Management	supply and subject to standard conditions would not result in any significant runoff to adjoining properties or the environment.	
Section 6.20 Development on land in Haberfield Heritage Conservation Area	Maintain a single storey appearance.	Yes
	Gross floor area above existing ground floor will not exceed the gross floor area of the existing roof space	N/A
	Development below the existing ground floor level will not exceed 25% of the gross floor area of the existing ground floor	N/A
	No excavation greater than 3m below existing ground level	N/A
	No dormers or gables	N/A
	50% of site to be landscaped Lot 1 – 199sqm (54%) Lot 2 – 189sqm (53%)	Yes Yes

5(b) Draft Environmental Planning Instruments

N/A

5(c) 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	
8 – Car parking	See discussion below
9 - Subdivision	See discussion below
15 - Stormwater Management	Yes
E2 – Haberfield Heritage Conservation Area	
1 – Preliminary	Yes
2 – Detailed Planning measures for residential properties	See discussion below
F – Development Category Guidelines	
1 – Residential – Low Density Zone	Yes

IWCDCP 2016

Chapter A – Miscellaneous

Part 8 Carparking

The DCP requires one (1) car space per dwelling house.

The site currently contains no off-street car parking spaces and no car parking spaces are proposed for either lot.

It is noted that the existing building has insufficient (~2.1m) side setbacks to facilitate car parking within the side or rear setbacks.

Whilst the depth of the front setback could facilitate a car parking space on each lot, given the relative narrowness of each lot (~7.5m), the inclusion of car spaces would significantly reduce the landscaped setting of the sites and street and would compromise the landscape setting.

Furthermore, the provision of car spaces would require the removal of established two (2) street trees which is not desirable. For these reasons, the provision of no off-street carparking is considered acceptable in this instance.

Part 9 Subdivision

Control	Proposed	Compliance
General DS1.1	•Lot sizes are less than the minimum allowed of 500sqm	No. See clause 4.6 exception
DS1.2	•Lots are rectangular with length greater than width	Yes
Site Characteristics DS 2.1	•Lots retain existing vegetation and address site constraints	Yes
Density DS3.1	•The subdivision does not create a density of lots that places an unreasonable burden on the carrying capacity of existing infrastructure, including public road and open space	Yes
Character DS4.1	•The lots are consistent with the prevailing lot pattern and streetscape character in the local area, including size, dimensions, configuration and pattern, including provision of front and rear gardens	Yes – see discussion below
Small Lot Torrens Title DS5.1 DS5.2	•The proposed lots do not have an adverse impact on the amenity of the adjoining properties. •The lots are rectangular and not battle -axe	Yes
Part 15 – Stormwater Management	• Standard conditions are recommended to ensure the appropriate management of stormwater. A condition is also included to provide separate stormwater drains to connect to the street to avoid the need for an easement.	Yes, subject to conditions

Chapter E2 – Haberfield Heritage Conservation Area

Section 2 – Detailed Planning Measures for Residential Properties

Section 2.3 states as follows:

- a) *Subdivision of existing allotments would be detrimental to the heritage significance of the Garden Suburb and is not acceptable.*

The proposed subdivision relates to an original building which is considered contributory to the Haberfield Conservation Area. The existing building currently presents clearly as two separate dwellings including a partitioned front setback (see Image 1 below).



Image 1: Front of site viewed from Alt Street.

No associated physical works are proposed (other than increasing height of the front balustrades) and as such the proposed subdivision will not impact the significance of the heritage conservation area, compromise the setting of the contributory building or its surrounds and will not change its relationship to the landscaped or built environments, subject to the imposition of conditions which are included in the recommendation.

Below is a list of existing semi-detached dwellings within 175m of the subject site with lot sizes similar or smaller to that which is proposed:

Property	Dwelling type	Lot size
185A Alt Street, Haberfield	Semi-detached dwelling	235sqm
185B Alt Street, Haberfield	Semi-detached dwelling	235sqm
197 Alt Street, Haberfield	Semi-detached dwelling	215sqm
199 Alt Street, Haberfield	Semi-detached dwelling	215sqm
1 Miller Street, Haberfield	Semi-detached dwelling	352sqm
3 Miller Street, Haberfield	Semi-detached dwelling	352sqm
7 Miller Street, Haberfield	Semi-detached dwelling	356sqm
9 Miller Street, Haberfield	Semi-detached dwelling	310sqm
33 Empire Street, Haberfield	Semi-detached dwelling	350sqm
35 Empire Street, Haberfield	Semi-detached dwelling	350sqm
36 Empire Street, Haberfield	Semi-detached dwelling	325sqm
38 Empire Street, Haberfield	Semi-detached dwelling	325sqm

As demonstrated above, the development of semi-detached dwellings and subdivision of dual occupancies within Haberfield is not uncommon. It can be reasonably assumed that subject building is original to the period of construction and is consistent with the pattern of development found within the subdivision.

The objective of Section 2, Chapter E2 of the DCP is as follows:

The pattern of development demonstrates the Garden Suburb ideals of creating a healthy and pleasant living environment, espoused by Richard Stanton and his professional colleagues in the town planning and real estate institutes. At Haberfield these ideals were designed and developed, protected by covenants and marketed to create Australia's first Garden Suburb. This pre-dated the first similar English Garden Suburb by three years, and established the principles for Australian suburbia for the next seventy years.

The proposal makes no changes to the existing pattern of development as the site contains an original dual occupancy building which is considered contributory to the Haberfield Conservation Area. The proposal also aligns with similar patterns of subdivision for existing semi-detached dwellings in Haberfield.

The application was referred to Council's Heritage Team who raised no objections to the proposed subdivision subject to any associated required physical works being reviewed.

For the reasons discussed above, it is considered that the proposal will not be detrimental to the heritage significance or ideals of the Garden Suburb and thus satisfies the objective Section 2, Chapter E2 of the DCP.

Chapter F – Development Category Guidelines

Control	Proposed	Compliance
Part 1 - Dwelling houses	<p><u>PC9 Principal private open space</u></p> <ul style="list-style-type: none"> The proposed private open spaces are directly accessible from the ground floor living areas, are at least 20sqm with a minimum dimension of at least 3.5m and will have an appropriate level of solar access (given their northern and eastern orientation), natural ventilation and privacy. 	Yes
	<p><u>PC14 Visual privacy</u></p> <ul style="list-style-type: none"> An adequate level of visual privacy for development and adjoining properties is maintained. The site contains existing fencing between the two lots within both the front and rear setbacks. 	Yes

5(d) The Likely Impacts

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

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

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

5(f) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. No submissions were received in response to the initial notification.

5(g) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

Section/Officer	Comment
Heritage Advisor	No objection to subdivision. Concerns raised about BCA upgrade works. See discussion elsewhere in this report.
Building Certification	No objection subject to conditions to upgrade building to comply with Building Code of Australia.

6(b) External

N/A

7. Section 7.11 Contributions/7.12 Levy

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

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Inner West Local Environmental Plan 2022* 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 Local Environmental Plan 2022*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the Minimum Lot Size development standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.

- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant Deferred Commencement to Development Application No. DA/2023/0300 for Torrens title subdivision of site into two (2) lots at 197-199 Alt Street, Haberfield subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

The following is a Deferred Commencement condition imposed pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*. This Consent will not operate and may not be acted upon until the Council is satisfied as to the following matter(s):

A. Heritage

- a. Documentation (including drawings) demonstrating how the existing balustrades on the front porches will be retained and treated in order to comply with the requirements of the BCA. New works shall ensure the appearance and integrity of the balcony is not compromised.
- b. Documentation demonstrating the changes to the party wall (or any other required works) necessary to ensure compliance with the BCA fire separation requirements. The changes must minimise impact to existing heritage fabric.

Evidence of the above matters must be submitted to Council within 2 years otherwise the Consent will not operate.

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 01 of 01	Plans showing proposed subdivision	28/03/2023	Sydney Surveyors
103/23 Draft 2	BCA Report	4 April 2023	NSW Building Certifiers

As amended by the conditions of consent.

DESIGN CHANGE**2. Stormwater drains**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with documentation demonstrating that separate stormwater drains shall be provided for each property to avoid the need for an easement.

GENERAL CONDITIONS**3. Works Outside the Property Boundary**

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

4. 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.

5. Erosion and Sediment Control

Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site.

6. Waste Management Plan

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RVMP) in accordance with the relevant Development Control Plan.

PRIOR TO CONSTRUCTION CERTIFICATE**7. 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

8. Structural Certificate for retained elements of the building

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction. The certificate must also include all details of the methodology to be employed in construction phases to achieve the above requirements without result in demolition of elements marked on the approved plans for retention.

DURING DEMOLITION AND CONSTRUCTION**9. Stormwater Drainage System**

Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines discharged by gravity to the kerb and gutter of a public road.

Separate stormwater drains shall be provided for each property.

Any existing component of the stormwater system that is to be retained, including any absorption trench or rubble pit drainage system, must be checked and certified by a Licensed Plumber or qualified practising Civil Engineer to be in good condition and operating satisfactorily.

If any component of the existing system is not in good condition and /or not operating satisfactorily and/or impacted by the works and/or legal rights for drainage do not exist, the drainage system must be upgraded to discharge legally by gravity to the kerb and gutter of a

public road. Minor roof or paved areas that cannot reasonably be drained by gravity to a public road may be disposed on site subject to ensure no concentration of flows or nuisance to other properties.

10. 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

11. Section 73 Certificate

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a Section 73 Certificate under the *Sydney Water Act 1994*.

12. Smoke Alarms - Certification of upgrade to NCC requirements

Prior to the issue of any Occupation Certificate, the Principal Certifier is required to be satisfied the existing building has been upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to smoke alarm systems.

PRIOR TO SUBDIVISION CERTIFICATE

13. 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.

If there are any changes to the number of occupancies including any additional occupancies created, a street numbering application must be lodged and approved by Council's GIS team before any street number is displayed.

14. Release of Subdivision Certificate

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

15. Separate Stormwater

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

16. 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.

ON-GOING**17. Bin Storage**

All bins are to be stored within the site.

ADVISORY NOTES**Noise**

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

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.

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.

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.

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.

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.

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*.

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 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.

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.

Toilet Facilities

The following facilities must be provided on the site:

- a. Toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees; and
- b. A garbage receptacle for food scraps and papers, with a tight fitting lid.

Facilities must be located so that they will not cause a nuisance.

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.

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.

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within Sections 69-86 of the *Environmental Planning and Assessment Regulations 2021*.

Asbestos Removal

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m² of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current Class A Friable Asbestos Removal Licence.

Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

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 - SITA 1300 651 116
Environmental Solutions 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.

Dial before you dig

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

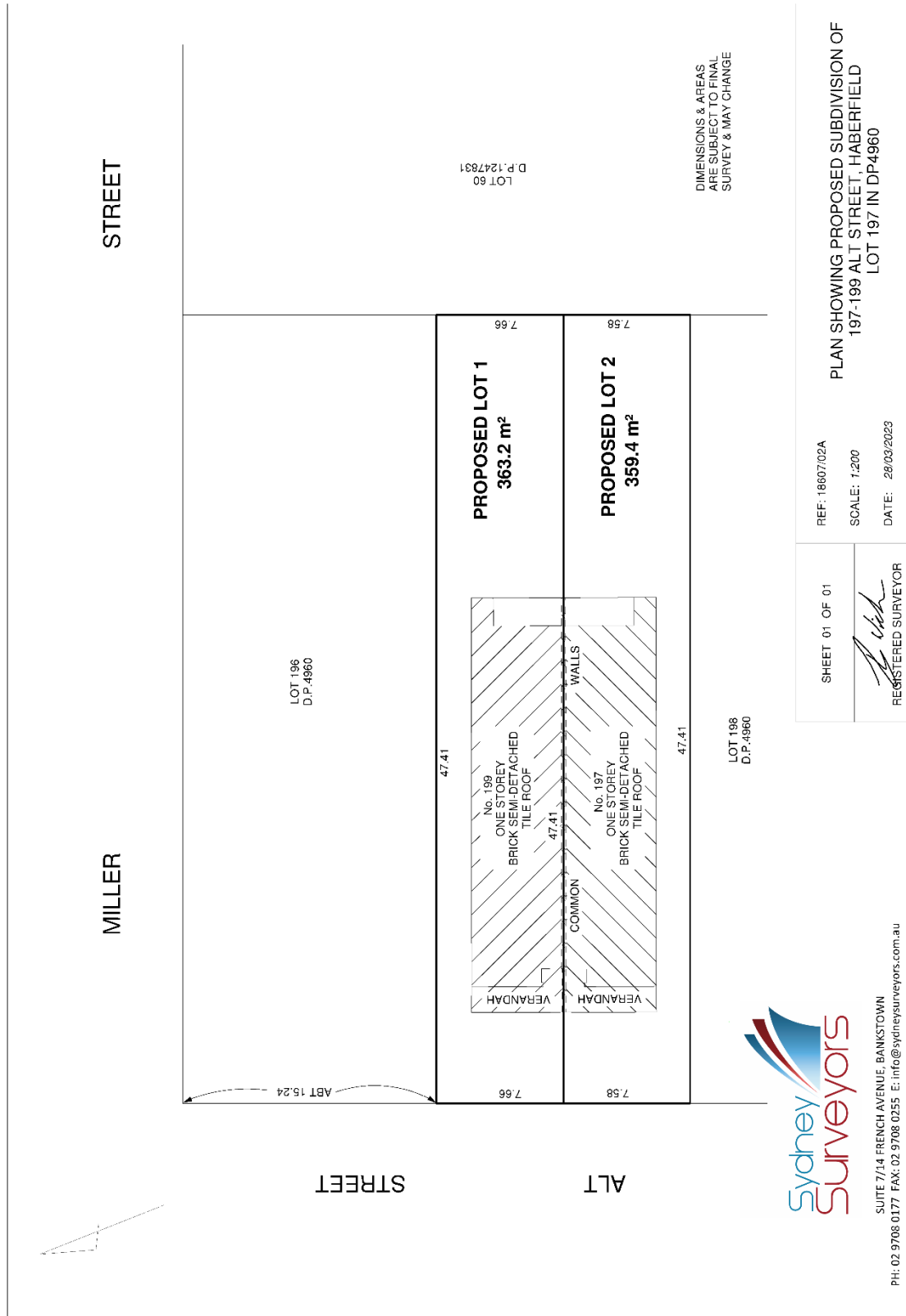
Lead-based Paint

Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.

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.

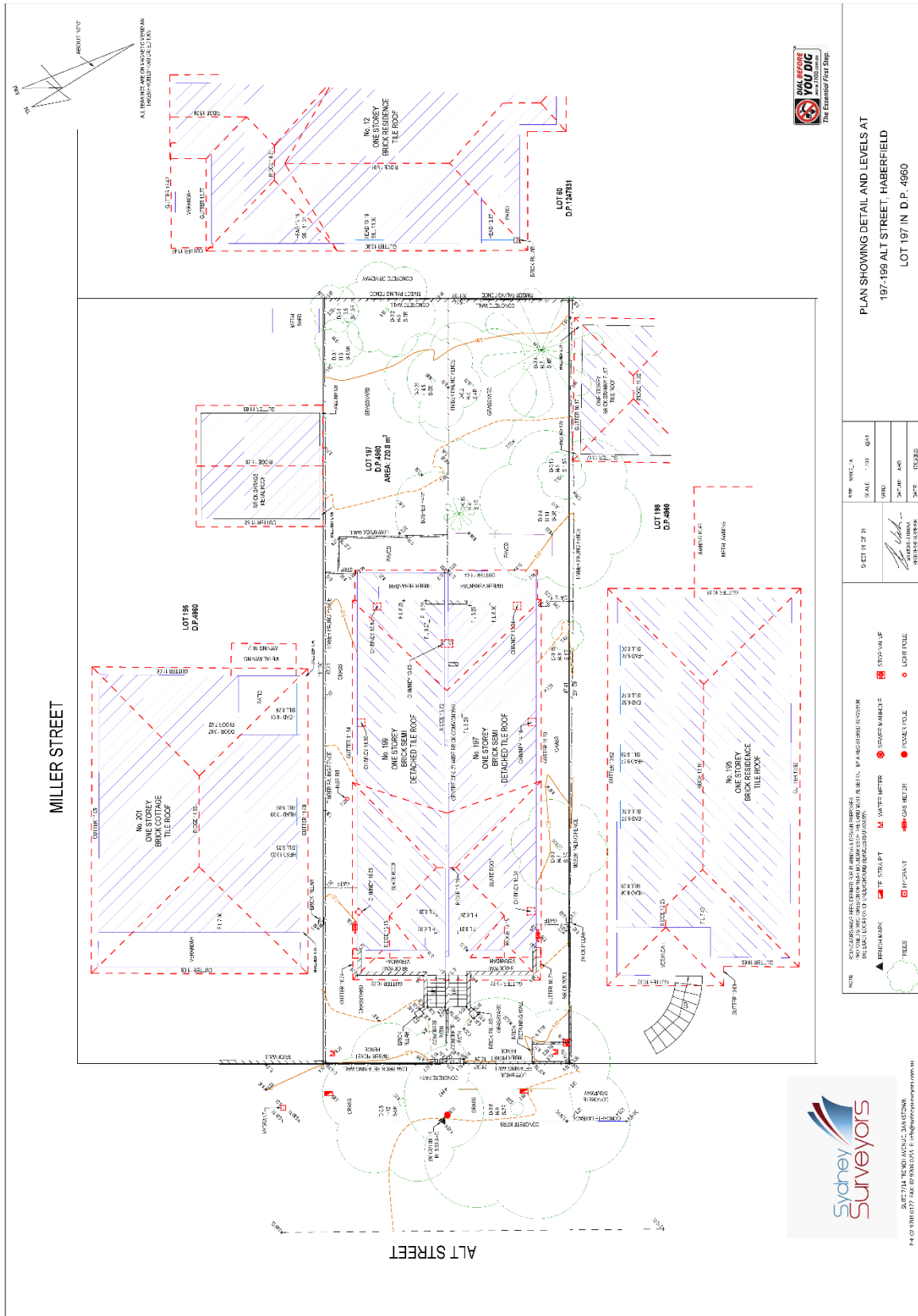
Attachment B – Plans of proposed development



Sydney Surveyors
 SUITE 7/14 FRENCH AVENUE, BANKSTOWN
 PH: 02 9708 0177 FAX: 02 9708 0255 E: info@sydneyurveyors.com.au

SHEET 01 OF 01
 REF: 16607/02A
 SCALE: 1:200
 DATE: 28/02/2023
 REGISTERED SURVEYOR

Document Set ID: 37675206
 Version: 1, Version Date: 27/04/2023



PLAN SHOWING DETAIL AND LEVELS AT
 197-199 ALT STREET, HABERFIELD
 LOT 197 IN D.P. 4860

REP: INCL. A	DATE: 11/01/2014
SCALE: 1:100	DATE:
APRIL	DATE:
30 APR	DATE:
APRIL 2014	DATE:
APRIL 2014	DATE:

- NOTE: REFER TO THE PLAN FOR A FULL LIST OF DIMENSIONS AND LEVELS. REFER TO THE PLAN FOR A FULL LIST OF DIMENSIONS AND LEVELS. REFER TO THE PLAN FOR A FULL LIST OF DIMENSIONS AND LEVELS.
- ▲ POINT MARK
 - 10' STRENGTH
 - 15' STRENGTH
 - 20' STRENGTH
 - 30' STRENGTH
 - 40' STRENGTH
 - 50' STRENGTH
 - 60' STRENGTH
 - 70' STRENGTH
 - 80' STRENGTH
 - 90' STRENGTH
 - 100' STRENGTH
 - 110' STRENGTH
 - 120' STRENGTH
 - 130' STRENGTH
 - 140' STRENGTH
 - 150' STRENGTH
 - 160' STRENGTH
 - 170' STRENGTH
 - 180' STRENGTH
 - 190' STRENGTH
 - 200' STRENGTH
 - 210' STRENGTH
 - 220' STRENGTH
 - 230' STRENGTH
 - 240' STRENGTH
 - 250' STRENGTH
 - 260' STRENGTH
 - 270' STRENGTH
 - 280' STRENGTH
 - 290' STRENGTH
 - 300' STRENGTH
 - 310' STRENGTH
 - 320' STRENGTH
 - 330' STRENGTH
 - 340' STRENGTH
 - 350' STRENGTH
 - 360' STRENGTH
 - 370' STRENGTH
 - 380' STRENGTH
 - 390' STRENGTH
 - 400' STRENGTH
 - 410' STRENGTH
 - 420' STRENGTH
 - 430' STRENGTH
 - 440' STRENGTH
 - 450' STRENGTH
 - 460' STRENGTH
 - 470' STRENGTH
 - 480' STRENGTH
 - 490' STRENGTH
 - 500' STRENGTH
 - 510' STRENGTH
 - 520' STRENGTH
 - 530' STRENGTH
 - 540' STRENGTH
 - 550' STRENGTH
 - 560' STRENGTH
 - 570' STRENGTH
 - 580' STRENGTH
 - 590' STRENGTH
 - 600' STRENGTH
 - 610' STRENGTH
 - 620' STRENGTH
 - 630' STRENGTH
 - 640' STRENGTH
 - 650' STRENGTH
 - 660' STRENGTH
 - 670' STRENGTH
 - 680' STRENGTH
 - 690' STRENGTH
 - 700' STRENGTH
 - 710' STRENGTH
 - 720' STRENGTH
 - 730' STRENGTH
 - 740' STRENGTH
 - 750' STRENGTH
 - 760' STRENGTH
 - 770' STRENGTH
 - 780' STRENGTH
 - 790' STRENGTH
 - 800' STRENGTH
 - 810' STRENGTH
 - 820' STRENGTH
 - 830' STRENGTH
 - 840' STRENGTH
 - 850' STRENGTH
 - 860' STRENGTH
 - 870' STRENGTH
 - 880' STRENGTH
 - 890' STRENGTH
 - 900' STRENGTH
 - 910' STRENGTH
 - 920' STRENGTH
 - 930' STRENGTH
 - 940' STRENGTH
 - 950' STRENGTH
 - 960' STRENGTH
 - 970' STRENGTH
 - 980' STRENGTH
 - 990' STRENGTH
 - 1000' STRENGTH



Attachment C- Section 4.6 Exception to Development Standards

Clause 4.6 Request Vary Minimum Lot Size

197-199 Alt Street, Haberfield

Client Inveresk Pty Ltd

Revision B
20 April 2023

 **Civic
Assessments**
Urban Planners

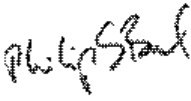


Phillip Bull BA (Syd) MUP (Melb) PIA
6 Woodcourt Street Marrickville 2204
Mobile: 0405 535 097 Email: philip.bull@civicassessments.com
ABN 48 680 779 849

Certification

This Clause 4.6 Request has been prepared to address the requirements of the Environmental Planning and Assessment Act, its Regulations and current NSW Land and Environment Court interpretations of this provision.

This Request is prepared in good faith to accurately describe the proposed development, its context and statement of environmental effects can be relied on.



Philip Bull
 BA (Syd.) MUP (Melb.) Dip Mgt (AIM) MPIA
 Principal, Civic Assessments
 Date: 20/04/2023

Documents Control

Rev	Description	DATE	AUTHOR	CHECKED
A	Reviewed Draft	16/04/2023	PSB	PSB
B	Client Review	20/04/2023	PSB	RH
C	Revise			

Civic Assessment
 ABN 48 680 779 849

6 Woodcourt Street
 Marrickville 2204
 Phone +0405 535 097

Contents		Page
1. INTRODUCTION		1
2. THE SUBDIVISION VARIATION SOUGHT.....		3
3. THE CLAUSE 4.6 TESTS		4
4. CLAUSE 4.6 VARIATION REQUEST – LOT SIZE		5
4.1 CLAUSE 4.6 (3) (A): COMPLIANCE UNREASONABLE OR UNNECESSARY		5
4.2 CLAUSE 4.6 (4) (A) (ii): THE PUBLIC INTEREST		8
4.3 CLAUSE 4.6 (4) (B): THE CONCURRENCE OF THE PLANNING SECRETARY		9
4.4 CLAUSE 4.6 (5): CONCURRENCE CONSIDERATIONS:		9
4.5 THE 'FIVE PART TEST'		9
4.6 FOUR2FIVE PTY LTD V ASHFIELD COUNCIL DECISION.....		11
4.7 INITIAL ACTION		12
5. CONCLUSION.....		13

CLAUSE 4.6 REQUEST LOT SIZE CONTROL
197-199 ALT STREET, HABERFIELD
CIVIC ASSESSMENTS | 22-049

1. INTRODUCTION

We write on behalf of Inveresk Pty Ltd to provide a Clause 4.6 Request to the minimum lot control in the Inner West Local Environmental Plan 2022 (the LEP) for a 2-lot subdivision of 2 existing dwelling houses (historic semi-detached dwelling houses).

The land to which this DA relates to is known as 197-199 Alt Street, Haberfield and legally known as (Lot 197 in DP 4960).

The site has an area of 720.8m² - see extract from current site survey below.

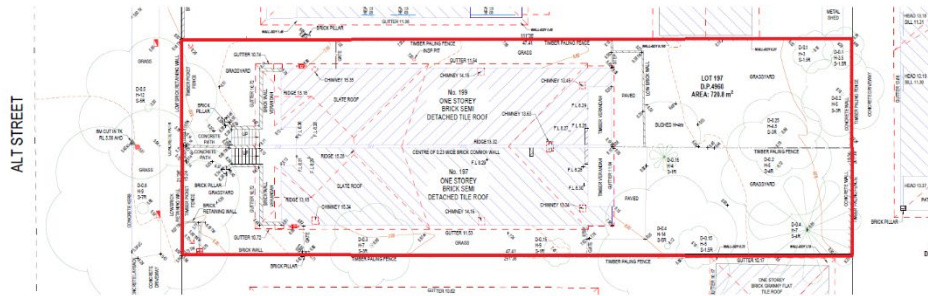


Figure 1: Survey Extract, Sydney Surveys

The existing building on the site comprises semi-detached dwelling houses – see photo below.



Photo 1: 199 to 197 Alt Street semi-attached dwellings 199-199 Alt Street, Site Visit 22/02/2023

The proposal is to Torren land subdivide the existing semi-detached dwelling houses onto their own lot as follows:

Property Address	Lot	Area
199 Alt Street	Lot 1	363.2m ²
197 Alt Street	Lot 2	359.4m ²

See summary plans below.

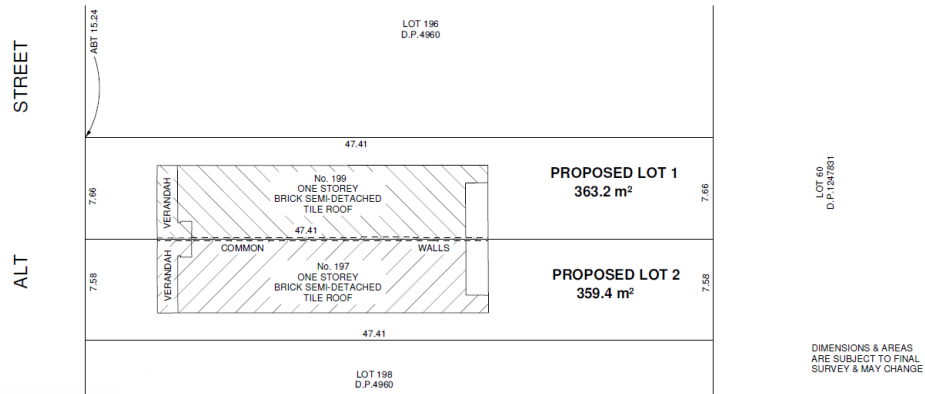


Figure 2: Plan of Subdivision, Sydney Surveyors 28/03/2034

No physical works other than required for fire safety linked to the subdivision are proposed.

A comprehensive Statement of Environmental Effects (SEE) is provided separately that deals with, amongst other issues, the appropriateness of the land use and development in the R2 Low Density Residential and Haberfield Heritage Conservation Area. The SEE is referred to and relied on in this Clause 4.6 Request.

This Clause 4.6 Request accompanies a development application (DA) for a 2 lot subdivision to the Inner West Council.

2. The Subdivision Variation Sought

The current local planning controls for the site are under the Inner West Local Environmental Plan 2022 (the LEP). The relevant controls are:

- Land Zoning R2 - Low Density Residential
- Height Of Building 7 m
- Floor Space Ratio 0.5:1
- Minimum Lot Size 500 m²
- Haberfield Heritage Conservation Area (nominated area of State significance)
Significance: Local
- Land Reservation Acquisition NA
- Foreshore Building Line NA
- Acid Sulfate Soils Class 5

A general subdivision standard as per clause 4.1 of 500m² for land subdivision – see extract from current minimum lot size map below.



A Clause 4.6 request is provided in respect to the subdivision sought, in particular the non-compliance of Lot 1 and 2 with the 500m² lot size requirement in the LEP.

3. The Clause 4.6 Tests

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the Land and Environment Court clarified that the consent authority must form two positive opinions of satisfaction under clause 4.6(4)(a).

The first opinion of satisfaction required by clause 4.6(4)(a)(i) is that the written request must adequately address the matters required to be demonstrated by cl 4.6(3) as follows:

- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (see section 4.1 below); and
- that there are sufficient environmental planning grounds to justify contravention of the development standard (see section 4.2 below).

The second opinion of satisfaction required by clause 4.6(4)(a)(ii) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard that is contravened and the zone objectives.

These matters are outlined in further detail below.

4. Clause 4.6 Variation Request – Lot Size

As discussed, pursuant to Clause 4.1A of the LEP a minimum 500m² lot size applies to land subdivision of dual occupancy development.

See metrics of the proposal below.

Address	Lot	Area	Under 500 m ²	
			27%	136.8 m ²
199 Alt Street	Lot 1	363.2 m ²	27%	136.8 m ²
197 Alt Street	Lot 2	359.4 m ²	28%	140.6 m ²

The proposed lots are 27-28% or 136 to 140sqm under the 500sqm standard.

The relevant matters to consider under Clause 4.6 of the LEP are addressed below.

4.1 Clause 4.6 (3) (a): that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The Objectives of the lot size controls in the LEP are:

“4.1 Minimum subdivision lot size

(1) *The objectives of this clause are as follows—*

- (a) *to ensure lot sizes cater for a variety of development,*
- (b) *to ensure lot sizes do not result in adverse amenity impacts,*
- (c) *to ensure lot sizes deliver high quality architectural, urban and landscape design,*
- (d) *to provide a pattern of subdivision that is consistent with the desired future character,*
- (e) *to ensure lot sizes allow development to be sited to protect and enhance riparian and environmentally sensitive land.*

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

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

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

- (a) *by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or*
- (b) *by any kind of subdivision under the Community Land Development Act 2021.”*

The proposal is a land subdivision of 2 existing semi-attached houses.

The site is in the Haberfield Heritage Conservation Area and zoned R2 Low Density Residential. The SEE provided establishes that the development is acceptable on land use and heritage grounds.

Indeed, in its current form the proposed housing would be considered a dual occupancy as it comprises 2 dwellings on one lot of land. A dual occupancy is a prohibited land use currently in the R2 zone. The proposal provides for a development that allows for a permissible land use on the site. A purpose of the R2 zone is one house per lot. The proposal achieves this land use outcome.

There is an established precedent in the locality for the subdivision of existing semi-detached dwelling houses. The proposal is consistent with the historic subdivision pattern.

The existing houses on their own lot exceed the standards of the Development Control Plan (DCP) in terms of Landscape Area, Site Cover, and Private Open Space. The proposed subdivision provides for an appropriate density and amenity for residential development on the land.

The proposed subdivision is also consistent and in keeping with the existing subdivision pattern. There is a demonstrated pattern of smaller lots with an area under 500m² as shown in the extract below from the current Cadastral Mapping for the locality – see mapping overleaf.



Figure 3: Cadastral Map, <https://maps.six.nsw.gov.au/>

As noted in the locality’s Cadastral Map smaller lots (under 400m²) are common and characteristic of the locality. Indeed, there is a clear pattern of small lot subdivision along the lines of constructed semi-detached housing apparent in the adjoining subdivision pattern.

The proposed land subdivision is compliant with objectives (a), noting the development is existing in terms of the buildings being subdivided and that lot sizes of below 500sqm are common in the locality.

The proposed land subdivision is compliant with objectives (b), noting there is no physical change to the subject buildings and each dwelling has good amenity on its own lot.

The proposed land subdivision is compliant with objectives (c), the subdivision allows for retention of 2 historic dwellings that enhances the Conservation Area.

The proposed land subdivision is compliant with objectives (d), the proposed lots are consistent with the existing subdivision pattern, noting similar sized lots for semi-detached dwellings are common in this locality.

The proposed land subdivision is compliant with objectives (e), as there is no riparian or environmentally sensitive land affected.

The subdivision is also consistent with other policy within the LEP that allows for reduced lot sizes for historic housing forms. The LEP envisages land subdivision of such historic semi-detached dwellings, see Clause 4.1A provisions below.

“4.1A Exceptions to minimum subdivision lot size for certain residential development

- (1) The objectives of this clause are as follows—*
 - (a) to encourage housing diversity without adversely affecting residential amenity,*
 - (b) to achieve planned residential density in certain areas.*
- (2) The minimum lot size for subdivision of land identified as “Area 1” on the Lot Size Map that is not land on which a heritage item is located or in a heritage conservation area is 200m² if—*
 - (a) a semi-detached dwelling is or will be located on each lot, and*
 - (b) each lot will have a minimum street frontage of 7m.*
- (3) The minimum lot size shown on the Lot Size Map does not apply to subdivision of land identified as “Area 2” on the Lot Size Map if—*
 - (a) each lot resulting from the subdivision will be used for the purposes of a dwelling house, and*
 - (b) each lot resulting from the subdivision will be at least 174m², but will not exceed 450m², and*
 - (c) the total number of lots on all land identified as “Area 2” on the Lot Size Map will not exceed 11.”*

Clause 4.1A does not apply to the site but applies to not dissimilar localities.

The LEP has a clear policy pathway for subdivision of historic semi-attached dwellings to 174 to 200m² minimum lot sizes. The proposal is consistent with the LEP policy on the land subdivision on small lot subdivision.

4.2 Clause 4.6 (4) (a) (ii): the proposed development will be in the public interest

The proposal is consistent with the objectives of the minimum lot size standards as described under clause 4.6 3 (a) above.

The site is in an established urban area within a Conservation Area, otherwise no ecological or hazard affectionations.

See zoning map extracts below.

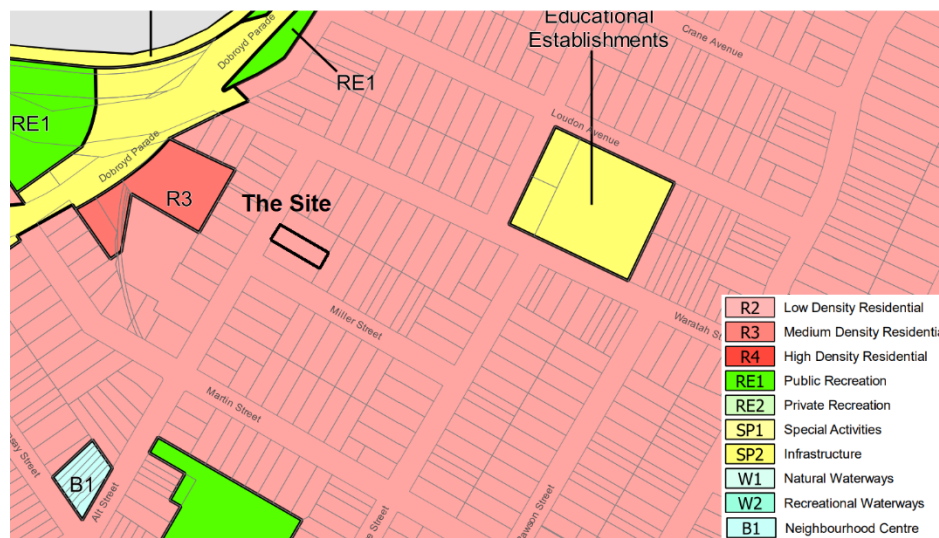


Figure 4: The Zoning, the LEP

The objectives of the R2 zone are as follows:

“Zone R2 Low Density Residential

1 Objectives of zone

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide residential development that maintains the character of built and natural features in the surrounding area.”*

In terms of the first objective, the land subdivision allows for 2 existing houses to be accommodated on their on lot. The current housing would be described a dual occupancy which is a prohibited land use in the R2 zoning. The proposal retains existing character housing, and the subdivision allows for a permissible housing form 'semi-detached dwellings' on the site. The proposal is consistent with the stated housing needs of the R2 zone.

The second objective is not relevant to the proposal.

In terms of the third objective, the proposal involves no physical change to the existing character housing and is consistent with this objective.

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

In general, the proposal is in the public interest as it allows for the existing dwelling houses to be upgraded with acceptable environmental impacts.

The proposed Clause 4.6 Request is consistent with the purpose of the R2 zone and specific policy on this matter, as it allows for housing need without impact.

The proposed development also better aligns with the R2 zoning as a prohibited use (a dual occupancy) is replaced with dwelling houses on their own lot, that is a purpose of this zone.

4.3 Clause 4.6 (4) (b): the concurrence of the Planning Secretary has been obtained.

It is assumed Council has delegation to consider the variation.

4.4 Clause 4.6 (5): In deciding whether to grant concurrence, the Planning Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

In terms of the concurrence provisions of Clause 4.6, the non-compliance with the site's Minimum lot control raises no matters of significance for State or regional environmental planning.

There is no public benefit in maintaining this control, as in this instance maintaining the standard would deny approval to a reasonable land subdivision proposal that is consistent with historic subdivision pattern and zone and Minimum lot control objectives, and specific policy on this type of applications (i.e., subdivision of historic dual occupancies). It therefore meets the public interest test within Clause 4.6.

There are no other matters relevant to the Secretary's concurrence in this instance.

4.5 The 'Five Part Test'

In addition to the above requirements, Councils may choose to not only use the principles of Clause 4.6 but also the 'five-part test' established by the NSW Land and Environment Court.

Court cases dealing with applications to vary development standards resulted in the NSW Land and Environment Court setting out a five-part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development standards is well founded. The 'five-part test' is outlined as follows: -

- "1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;*
- 2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4. the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- 5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone."*

In relation to point (1):-

**Clause 4.6 Request Minimum Lot Size Control | 197-199 Alt Street, Haberfield
Civic Assessments | 23-001 | Page | 9**

The proposal meets the relevant objectives of the Minimum lot standard, as detailed previously.

In relation to point (2):-

We would argue that this part of the test contradicts the first point in the test. We have outlined that the objectives of the standard are still met despite the alleged non-compliance with the standard. It would be unusual to find a situation where the underlying objective is not relevant to a development.

In relation to point (3):-

The proposal provides for a land subdivision that addresses the core housing purposes of the R2 zone (need and permissibility), is consistent with the objectives of the lot size control and specific policy on this type of development. It would be contrary to the standard to deny this variation.

In relation to point (4):-

Council maintains a register of variations granted and it routinely varies its LEP controls.¹

This request is consistent with how Council administers clause 4.6.

In relation to point (5):-

The Applicant does not rely on this point as my view is the building and form of development proposed is appropriate to the site's R2 zone.

¹See <https://www.innerwest.nsw.gov.au/about/reports-and-registers/planning-decisions/variations>, DA/2021/1090 63 Balmain Road LEICHHARDT NSW 2040, DA/2022/0421 220 Old Canterbury SUMMER HILL

4.6 Four2Five Pty Ltd v Ashfield Council decision

This clause 4.6 Request is prepared cognisant and in accordance with recent Court decisions on the proper consideration of such requests as outlined in the Four2Five Pty Ltd v Ashfield Council decision and its recent judicial review (see [2015] NSWLEC 90). In this case the Court considered that the justification under clause 4.6(3) (b) required 'particular reference to the circumstances of the proposed development'. In practice, this means a request needs a site-specific justification.

In this instance, the site-specific justification is that recognises and allows for the upgrade of a historic dual occupancy to permissible form of development (semi-detached houses), meets specific policy requirements and has no environmental adverse impacts and provides for a more rational ownership structure for the existing 2 dwelling houses.

There are no environmental planning grounds to justify seeking compliance with the lot size control in this instance.

4.7 Initial Action

In addition to the above requirements, the principles of *Initial Action Pty Ltd v Woollahra Municipal Council* (2018 NSWLEC 118) clarifies the relevant tests of clause 4.6 that compliance must be 'unreasonable and unnecessary' and that there is suitable 'environmental planning grounds' for the variation.

In this instance compliance with the subdivision standard is unreasonable and unnecessary as the proposal is compliant with the objectives of the minimum lot control and R2 zone and the application of this standard would hinder a form of development that is consistent with its streetscape and provides for accommodation consistent with the purpose of the R2 zone.

In terms of environmental planning grounds for the proposal, the physical impact of the land subdivision is reasonable, consistent with the objects of the Act and the objectives of the R2 zone.

5. Conclusion

The objectives of clause 4.6 in the LEP are:

“4.6 Exceptions to development standards

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

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

The proposal when reviewed against the objectives of the minimum lot size control and the R2 zoning, and relevant policy on land subdivision is an appropriate development and meets the objectives of Clause 4.6.

It is also noted in this Clause 4.6 and the SEE submitted with the DA, that the land subdivision of semi-detached houses is common and reflected in the current subdivision pattern. The LEP also provides for policy on land subdivision (see Clause 4.1A) that provide for land subdivision of semi-attached dwellings less than 500m². The proposal is consistent with this policy and the existing subdivision pattern.

The current housing would be described as a dual occupancy which is a form of housing that is technically prohibited in the R2 zoning. The proposal retains existing character housing, and the subdivision allows for a permissible housing form 'semi-detached dwellings' on the site. The proposal is consistent with the stated housing needs of the R2 zone and allows for the land use to transition from a prohibited to permissible land use. In a simplistic sense the purpose of R2 zone is one lot, one house. The proposal achieves this objective,

The land subdivision recognises the historic development on the site and improves the amenity and efficiency of that accommodation, in as much as the application will be an opportunity to fire-upgrade the existing houses.

The proposed subdivision has general merit, as the dwellings are existing and consistent with current policy for the subdivision of historic semi-detached dwellings. The proposal will allow for the fire upgrade of the existing dwellings. The proposal has no adverse physical impacts.

Having regard to the above, it can be concluded that compliance with the lot size control for this DA is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify the non-compliance. The proposal is also in the public interest. It is consistent with the objectives of the standard as well as the objectives of the zone. A good planning outcome is facilitated by approval of this request.

The proposal is reasonable, appropriate, and worthy of support by the Inner West Council.