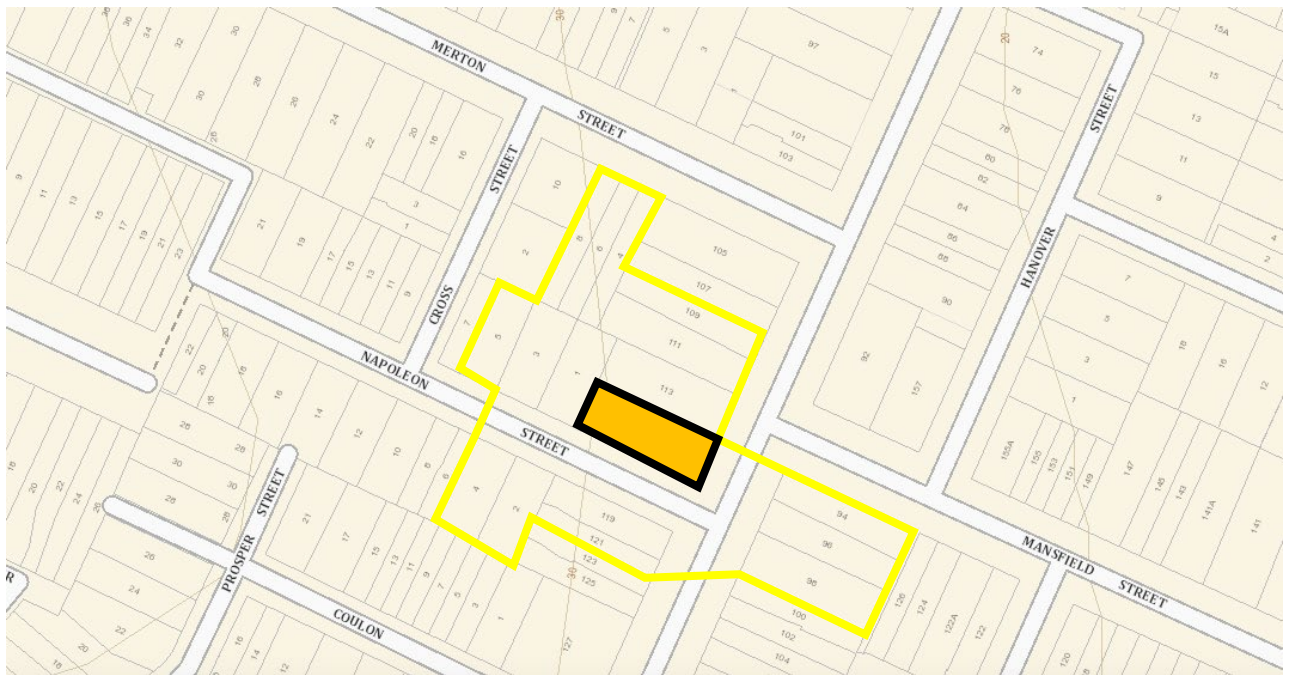







INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2023/0443
Address	115-117 Evans Street ROZELLE
Proposal	Alterations and works to existing dual occupancy and Torrens title subdivision into two lots
Date of Lodgement	6 June 2023
Applicant	Chapman Planning Pty Ltd
Owner	Rafique M Abdullah
Number of Submissions	Initial: 0
Value of works	\$45,000.00
Reason for determination at Planning Panel	Section 4.6 variation exceeds 10%
Main Issues	Subdivision
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



LOCALITY MAP

Subject Site		Objectors		 N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and works to an existing dual occupancy and Torrens title subdivision into two lots at 115-117 Evans Street Rozelle.

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

The main issues that have arisen from the application include:

- Proposed lot size.

The non-compliance is acceptable given that no additions are proposed and the proposal reinforces the existing pattern of development, maintains the existing dwellings which provide a positive contribution to the streetscape and therefore the application is recommended for approval.

2. Proposal

The proposal seeks alterations and works to an existing dual occupancy and subsequent Torrens title subdivision into two lots. The works involve fire rating the existing wall between the two lots. The proposal will result in 2 Torrens title lots of the following size/frontage:

Site	Site Area	Frontage
115 Evans Street	150.5sqm	5.25 metres
117 Evans Street	129sqm	4.94 metres

3. Site Description

The subject site is located on the northern western side of Evans Street, between Merton Street and Napoleon Street, Rozelle. The site consists of 1 allotment and is generally rectangular in shape with a total area of 279.6 sqm and is legally described as Lot 3 in Deposited Plan 379.

The site has a frontage to Evans Street of 10.2metres and a secondary frontage of approximately 27.4 metres to Napoleon Street.

The site supports 2 x two storey dwellings. The adjoining properties support single and two storey dwelling houses.

The property is located within the Valley Heritage Conservation Area. Two trees are located on the site within the rear yard. The site is located within the R1- General Residential zone.

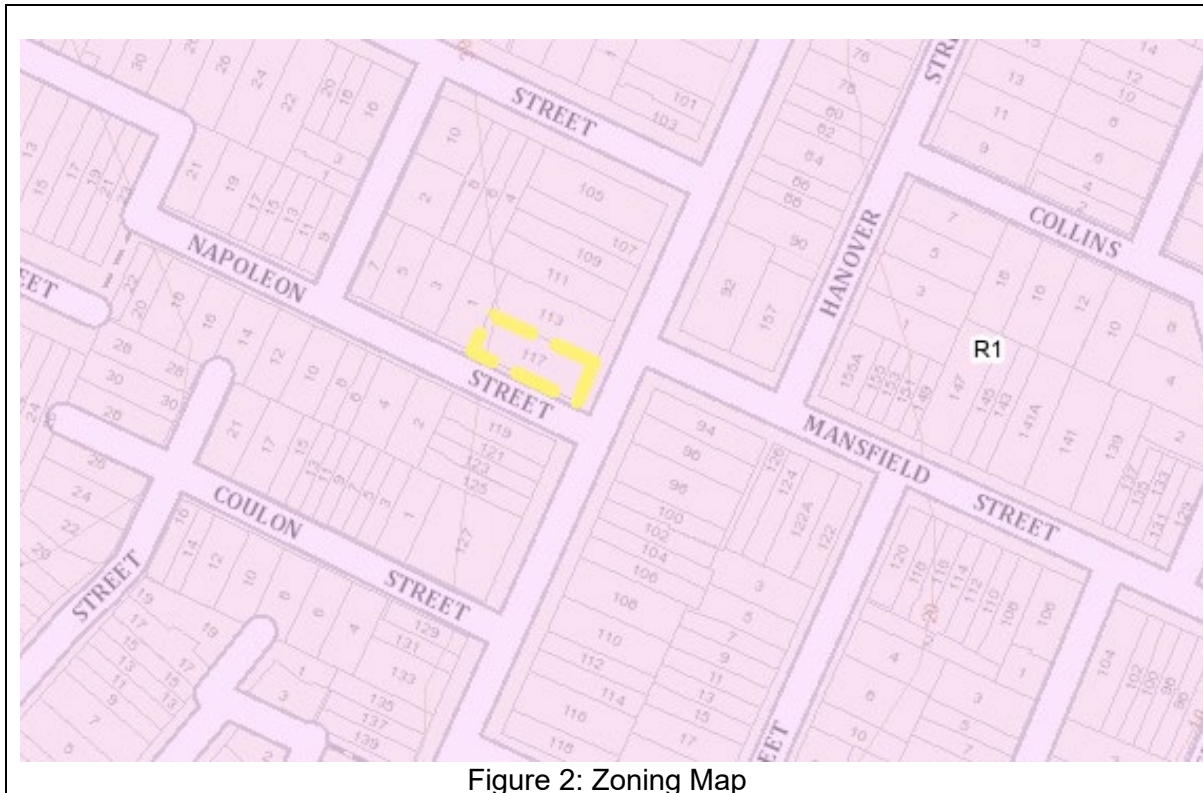


Figure 2: Zoning Map

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
D/2014/560	Removal of 1 x Eucalyptus sp (Gum) from the rear of the site.	Refused – 20 October 2014

4(b) Application history

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

Date	Discussion / Letter / Additional Information
6 June 2023	Application lodged
20 June 2023 – 4 July 2023	Application notified

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*

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.

5(a)(ii) *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 2.7 – Demolition requires development consent
- Section 4.1 – Minimum subdivision lot size
- Section 4.3 – Height of buildings
- Section 4.3C – Landscaped areas for residential accommodation in Zone R1
- 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 6.1 – Acid sulfate soils
- Section 6.2 – Earthworks

- Section 6.3 – Stormwater management
- Section 6.8 – Development in areas subject to aircraft noise

Section 2.3 Land Use Table and Zone Objectives

The site is zoned R1 under the IWLEP 2022. The IWLEP 2022 defines the proposed development as:

semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling.

The development is permitted with consent within the land use table. The development is consistent with the objectives of the R1 zone.

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

Section 4 Principal Development Standards

Lot 1 (117 Evans Street):

Standard	Proposal	Non compliance	Complies
Minimum Subdivision Lot Size Minimum 200sqm	129sqm	35% or 71sqm	No
Floor Space Ratio Maximum permissible: 0.8:1 or 103.2sqm	0.67:1 or 86.12sqm	-	Yes
Landscape Area Minimum permissible: 15% or 20sqm	15% or 19.38sqm	-	Yes
Site Coverage Maximum permissible: 60% or 78sqm	56% or 72.84sqm	-	Yes

Lot 2 (115 Evans Street):

Standard	Proposal	Non compliance	Complies
Minimum Subdivision Lot Size Minimum 200sqm	150.5sqm	24% or 49.5sqm	No
Floor Space Ratio Maximum permissible: 0.8:1 or 120.4sqm	0.66:1 or 98.88sqm	-	Yes
Landscape Area Minimum permissible: 15% or 23sqm	19% or 28.05sqm	-	Yes
Site Coverage Maximum permissible: 60% or 91sqm	58% 86.8sqm	-	Yes

Section 4.6 Exceptions to Development Standards

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

- Section 4.1 – Minimum Lot Size

The applicant seeks a variation to the minimum subdivision lot size development standard under Section 4.1 of the *IWLEP 2022* for Lot 1 (117 Evans Street) of 35% or 71sqm and for Lot 2 (115 Evans Street) of 24% or 49.5sqm. 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 contravention to the minimum lot size standard is a result of the existing dual occupancy dwelling layout. The subdivision relates to an existing dual occupancy development and does not seek to increase residential density on the site beyond that of the existing development.
- The proposed subdivision compliments the established and predominant subdivision pattern of development along Evans Street. In this case, the resultant lots proposed are suitable for the subject site with respect to the established development context and are compatible with the planning objectives and intended outcomes of the objectives of the R1 – General Residential zone.
- The contravention to the minimum lot size standard does not result in an overdevelopment of each lot as the resultant lots comply with the FSR, landscaped area, and site coverage development standards confirming that the lots can comfortably contain separate dwellings in accordance with the envisioned character of development under the LEP.
- The proposed contravention does not result in any significant environmental or amenity impacts when compared with a complying lot size.

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

It is considered the development is in the public interest because it is consistent with the objectives of the R1 – General Residential Zone in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- *To provide for the housing needs of the community.*
The proposal is for subdivision only, each lot will consist of a two bedroom dwelling and ample private open space area to the rear thus providing for the housing needs of the community.
- *To provide for a variety of housing types and densities.*
The lot sizes proposed are similar to that within the immediate vicinity of the subject site. The proposed subdivision will retain the existing dwelling uses ensuring a variety of housing types is provided within the area.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

NA

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

The application seeks the subdivision of the existing lot with no physical works proposed to the existing dwellings apart from fire rating the wall between the two dwellings. With this considered the proposal will retain the existing streetscape presentation to Evans Street with no impacts to the character or natural features of the area. The subdivision proposed is consistent with the established lot pattern to the immediate south and north of the subject site.

It is considered the development is in the public interest because it is consistent with the objectives of the landscaped area development standard, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- *(a) to ensure lot sizes cater for a variety of development,*
The density of the proposal reflects its adjoining context and locality.
- *(b) to ensure lot sizes do not result in adverse amenity impacts,*
The proposal does not seek to undertake any significant physical works (with the exception of fire rating), as such the lot sizes proposed will not result in any additional adverse amenity impacts to the streetscape or adjoining properties.
- *(c) to ensure lot sizes deliver high quality architectural, urban and landscape design,*
The lot sizes proposed ensure that each dwelling is able to retain good internal and external amenity.
- *(d) to provide a pattern of subdivision that is consistent with the desired future character,*
The proposal is consistent with the pattern of subdivision in the surrounding area.
- *(e) to ensure lot sizes allow development to be sited to protect and enhance riparian and environmentally sensitive land.*
The subject site is not located on riparian or environmentally sensitive land, as such this objective is not applicable to the proposal.

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 Lot Size Development Standard and it is recommended the Section 4.6 exception be granted.

Section 5.10 – Heritage conservation

The subject site is a contributory dwelling located within The Valley Heritage Conservation Area (C27 in Schedule 5 of the Inner West LEP 2022). The site currently contains a dual occupancy and the proposal intends to subdivide the land based on the existing layout of the two semis. This would result in two lots, roughly 5m in width. No work is proposed to the

dwellings apart from fire rating the wall between the two dwellings, thereby maintaining the existing built form with no discernible impact to the HCA.

The subdivision pattern in the surrounding area features a number of narrow blocks, therefore the proposed subdivision pattern would be in keeping with this character and is acceptable.

The proposal is considered acceptable with regard to Section 5.10 of IWLEP 2022.

5(b) Development Control Plans

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

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	Yes
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.5 Corner Sites	Yes – see discussion
C1.6 Subdivision	Yes
C1.7 Site Facilities	Yes
C1.8 Contamination	NA
C1.9 Safety by Design	NA
C1.10 Equity of Access and Mobility	NA
C1.11 Parking	Yes – see discussion
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	NA
C1.14 Tree Management	NA
C1.15 Signs and Outdoor Advertising	NA
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	NA
C1.17 Minor Architectural Details	NA
C1.18 Laneways	NA
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	NA
C1.20 Foreshore Land	NA
C1.21 Green Roofs and Green Living Walls	NA
Part C: Place – Section 2 Urban Character	
C2.2.5.1 The Valley ‘Rozelle’ Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	Yes

C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.10 Views	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	NA
C3.14 Adaptable Housing	NA
Part C: Place – Section 4 – Non-Residential Provisions	NA
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	NA
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	NA
D2.5 Mixed Use Development	NA
Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	NA
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	NA
E1.1.5 Foreshore Risk Management Report	NA
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Yes
E1.2.4 Stormwater Treatment	NA
E1.2.5 Water Disposal	NA
E1.2.6 Building in the vicinity of a Public Drainage System	NA
E1.2.7 Wastewater Management	NA
E1.3 Hazard Management	NA
E1.3.1 Flood Risk Management	NA
E1.3.2 Foreshore Risk Management	NA
Part F: Food	NA
Part G: Site Specific Controls	NA

The following provides discussion of the relevant issues:

C1.6 Subdivision

The proposed subdivision of the existing dual occupancy is considered to meet the objectives and relevant controls under the clause. A Section 4.6 variation to the Minimum Lot Size development standard has been submitted and is considered worthy of support. As dual occupancy developments are no longer permitted under the *Inner West LEP 2022*, the Torrens Title subdivision will result in a permissible outcome (semi-detached dwellings) and formalise an existing built form situation which has no external impacts to the locality and reinforces the adjoining subdivision pattern.

C1.11 Parking

The existing dwellings do not provide for off-street parking and the proposal does not seek to alter this arrangement. It is considered the proposed subdivision would not result in an increased demand for parking and the proposal is considered satisfactory in this regard.

5(c) 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(d) 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(e) 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(f) 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 and issues raised in those referrals have been discussed in section 5 above.

- Engineering;
- Heritage; and
- Building Certification.

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions and 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 *Leichhardt Development Control Plan 2013*.

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

The application is considered suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *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 consent to Development Application No. DA/2023/0443 for alterations and works to an existing dual occupancy and Torrens title subdivision into two lots at 115-117 Evans Street Rozelle subject to the conditions listed in Attachment A below.

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 1	Plan Showing Existing and Proposed Subdivision Layout at 115-117 Evans Street, Rozelle	16 September 2022	Norton Survey Partners
A1.01 Revision A	Existing Site Plan	22 May 2023	Norton Survey Partners
A2.21 Revision A	Existing Ground Floor Plan	22 May 2023	Norton Survey Partners
A2.22 Revision A	Existing First Floor Plan	22 May 2023	Norton Survey Partners
A3.01 Revision A	Elevations 1	22 May 2023	Norton Survey Partners
A3.02 Revision A	Elevations 2	22 May 2023	Norton Survey Partners

As amended by the conditions of consent.

FEES

2. Security Deposit - Custom

Prior to the commencement of demolition works or prior to the issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of

carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit:	\$2,800.00
Inspection Fee:	\$350.00

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.

The inspection fee is required for the Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.

A request for release of the security may be made to the Council after all construction work has been completed and a final Occupation Certificate issued.

The amount nominated is only current for the financial year in which the initial consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.

3. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.25% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$250,000 or more.

GENERAL CONDITIONS

4. Boundary Alignment Levels

Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary.

5. 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 (RWMP) in accordance with the relevant Development Control Plan.

6. 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.

7. 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.

8. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**9. Hoardings**

The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

Separate approval is required from the Council under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property.

10. Advising Neighbours Prior to Excavation

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

11. Construction Fencing

Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.

PRIOR TO CONSTRUCTION CERTIFICATE**12. 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.

13. 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 Stormwater Drainage Concept plan on Drawing No. 232074 version (1) prepared by C.K ENGINEERING SERVICES and dated 5 June 2023, must be amended to comply with the following:
- b. 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;
- c. 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;
- d. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm in the case of low and medium residential developments, the twenty (20) year ARI Storm in the case of high-density residential development and commercial and/or industrial developments and the fifty (50) year ARI Storm in the case of heavy industry. In all cases, the major event surface flow paths must be designed to cater for the one hundred (100) year ARI Storm;

- e. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than to drain downpipes to the rainwater tank(s);
- f. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, must be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Council's DCP. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled;
- g. 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;
- h. As there is no overland flow/flood path available from the rear and central courtyards to the Evans Street frontage, the design of the sag pit and piped drainage system is to meet the following criteria:
 - 1. Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe;
 - 2. The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building; and
 - 3. The design shall make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- i. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas;
- j. 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;
- k. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- l. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- m. 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;
- n. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- o. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- p. No impact to street tree(s);

14. 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.

15. 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**16. 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**17. No Encroachments**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any encroachments on to Council road or footpath resulting from the building works have been removed, including opening doors, gates and garage doors with the exception of any awnings or balconies approved by Council.

18. 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.

19. Torrens Title Subdivision to Occur before Occupation

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

PRIOR TO SUBDIVISION CERTIFICATE**20. 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.

21. 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.

22. 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. [Street Numbering Application](#)

ON-GOING**23. Bin Storage**

All bins are to be stored within the site.

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 Sections 69-86 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.

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.

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.

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.

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.

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.

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).

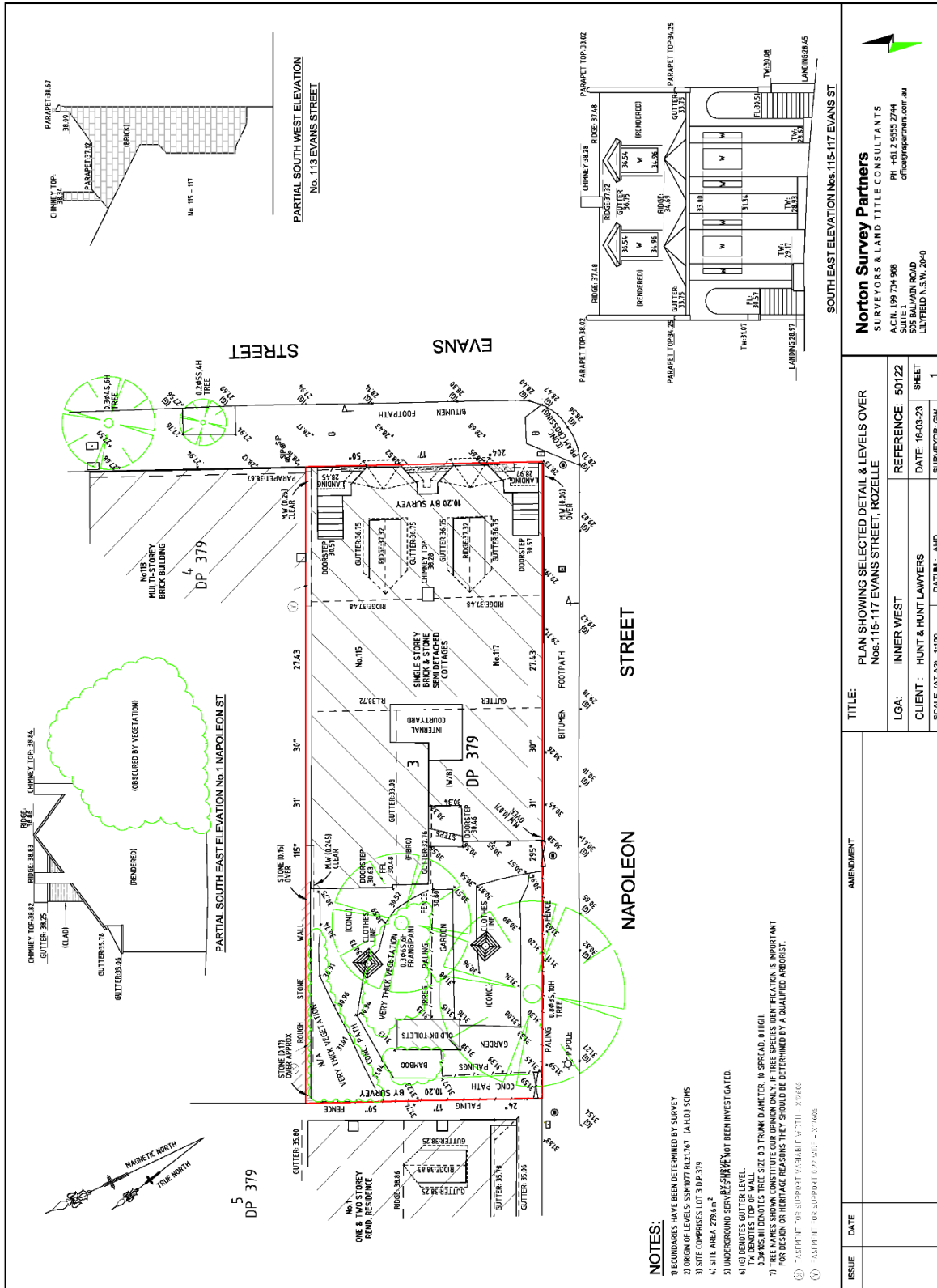
Removal of friable asbestos material must only be undertaken by a contractor that holds a current Class A Friable Asbestos Removal Licence.

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.

Attachment B – Plans of proposed development

Consultant Ref ID: 21780169
Version 1, Version Date: 05/05/2022

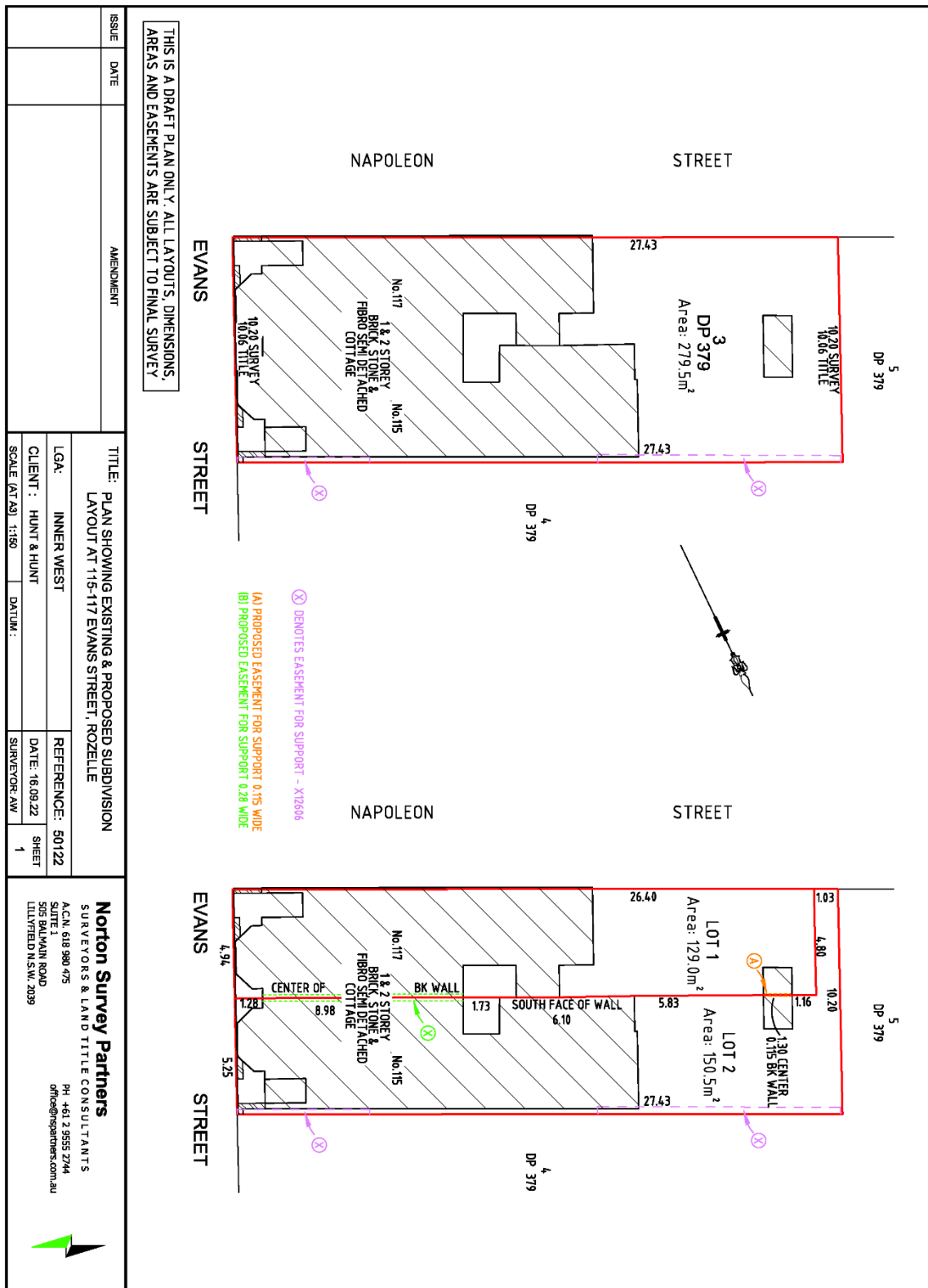


- NOTES:**
- 1) BOUNDARIES HAVE BEEN DETERMINED BY SURVEY
 - 2) ORIGIN OF LEVELS: 55M1077 RL21.767 (A.H.O.J. SCMS)
 - 3) SITE COMPRISES LOT 3 DP 379
 - 4) SITE AREA 279.6m²
 - 5) UNDERGROUND SERVICES HAVE NOT BEEN INVESTIGATED.
 - 6) (G) DENOTES GUTTER LEVEL
 - 7) TREE NAMES SHOWN CONSTITUTE OUR OPINION ONLY. IF TREE SPECIES IDENTIFICATION IS IMPORTANT FOR DESIGN OR UPGRADE REASONS THEY SHOULD BE DETERMINED BY A QUALIFIED ARBORIST.
 - 8) *ASPIRIT* AND *ASPIRIT* ARE SUPPORT VARIABLES W/3711 - 27260
 - 9) *ASPIRIT* AND *ASPIRIT* ARE SUPPORT VARIABLES W/3711 - 27260

Norton Survey Partners
SURVEYORS & LAND TITLE CONSULTANTS
A.C.N. 199 724 968 PH +61 2 9555 2744
SUITE 1 305 BARRACKS ROAD OFFICE@NORTONPARTNERS.COM.AU
LUTHERFIELD NSW 2040

TITLE: PLAN SHOWING SELECTED DETAIL & LEVELS OVER	
No. 115-117 EVANS STREET, ROZELLE	
LGA: INNER WEST	REFERENCE: 50122
CLIENT: HUNT & HUNT LAWYERS	DATE: 16-03-23
SCALE (AT 25): 1:100	DATUM: AHD
	SURVEYOR: GW
	SHEET: 1

ISSUE	DATE	AMENDMENT



Document Set ID: 37780160
 Version: 1, Version Date: 05/06/2023

115 - 117 EVANS STREET ROZELLE NSW

SUBDIVISION APPLICATION



DRAWING LIST			
ID	DRAWING	REVISION	DATE
A0 Titlepage			
A0.01	Titlepage	A	22/05/2023
A1 Site			
A1.01	Existing Site Plan	A	22/05/2023
A2 Plan - General Arrangements			
A2.21	Ground Floor	A	22/05/2023
A2.22	First Floor	A	22/05/2023
A3 Elevations			
A3.01	Elevations 1	A	22/05/2023
A3.02	Elevations 2	A	22/05/2023
A5 Supporting Information			
A5.01	GFA Calculations	A	22/05/2023
A5.02	Landscape and Site Coverage	A	22/05/2023

SPIRAL ARCHITECTS LAB
 Nominated architect: Folipe Ayala
 nsw reg no. 02623

Document Set ID: 37750160
 Version: 1, Version Date: 05/06/2023

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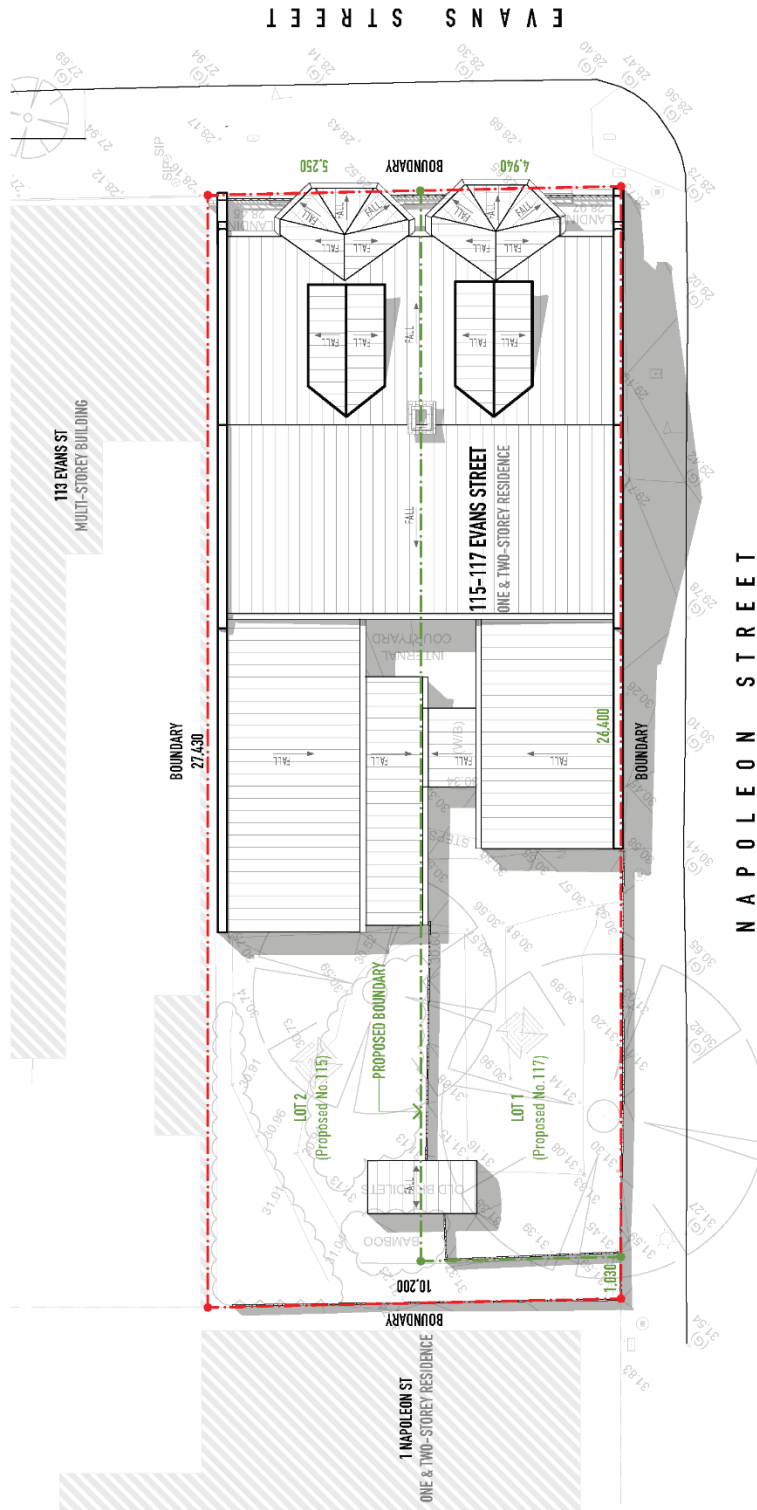
REV HISTORY:
 Rev. No. 33 22/05/2023

PROJECT ID: Humbug House 25640
ADDRESS: 115-117 Evans St Rozelle, NSW
STATUS: Subdivision
CLIENT: Verna & Rollie

SUBSET: Titlepage
LAYOUT: Titlepage
DRAWING NUMBER: A0.01
SCALE: NORTH

REV DATE: 22/05/23
REVISION: A

LEGEND
- Existing elements
- New elements



Plan
Site Plan
SCALE: 1:100

SPIRAL ARCHITECTS LAB
 Newcastle architect: Felipe Ayres
 NSW reg. no. 8013

Document Set ID: 37790160
Version: 1.1, Version Date: 05/06/2023

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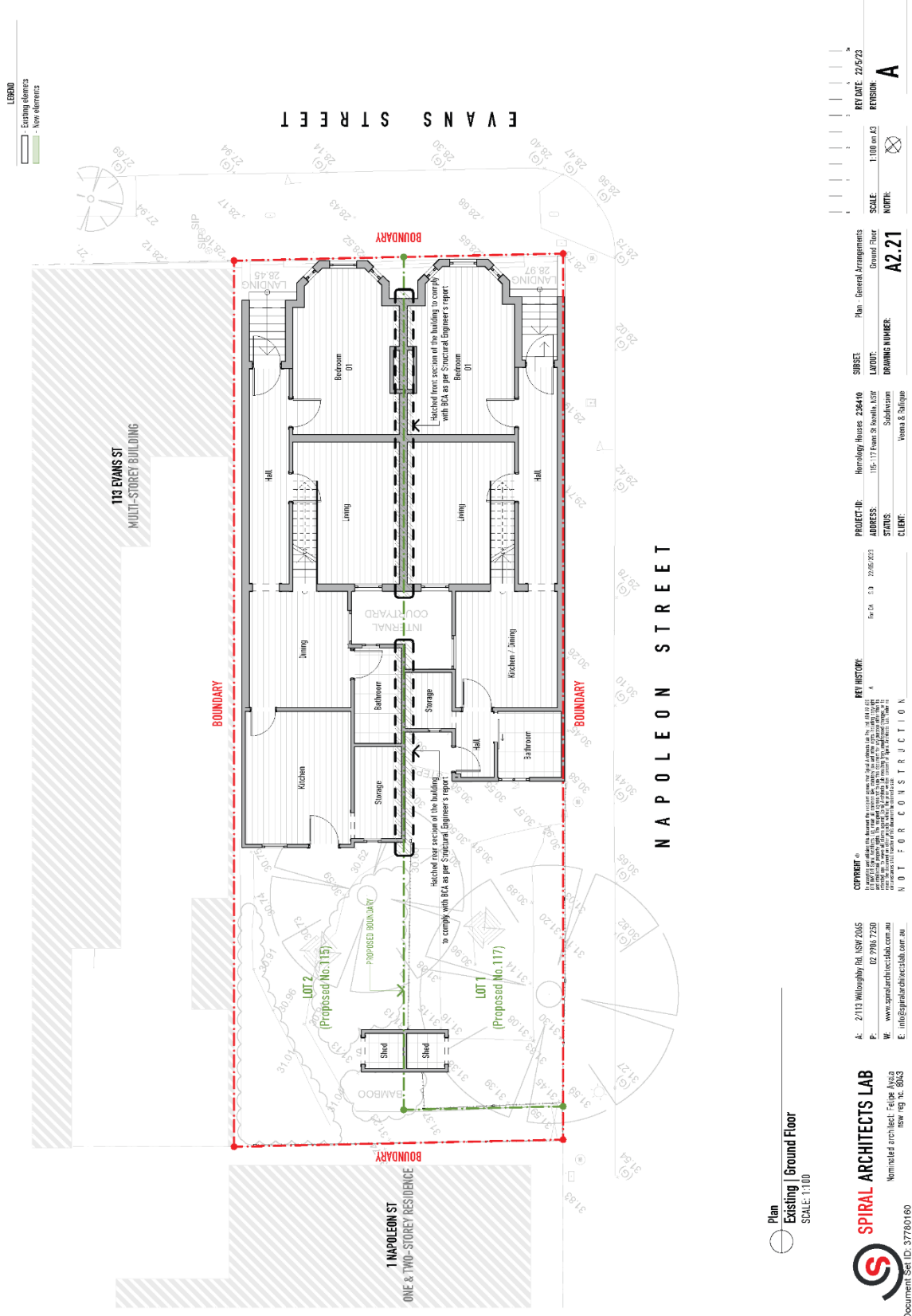
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REV HISTORY:
 Rev No. 03 22/05/2023

PROJECT-ID: Heroldy House, 28440
 ADDRESS: 115-117 Evans St, Newcastle, NSW
 STATUS: Subdivision
 CLIENT: Venes & Solfrigo

SUBSET: Heroldy House, 28440
 LAYOUT:
 DRAWING NUMBER: **A1.01**

Scale: 1:100 (m A3)
 NORTH:
 REV DATE: 22/5/23
 REVISION: **A**



Plan
Existing | Ground Floor
SCALE: 1:100

SPIRAL ARCHITECTS LAB
 Nominated architect: Felipe Ayres
 NSW reg. no. 8013

Document Set ID: 37790160
 Version: 1, Version Date: 05/06/2023

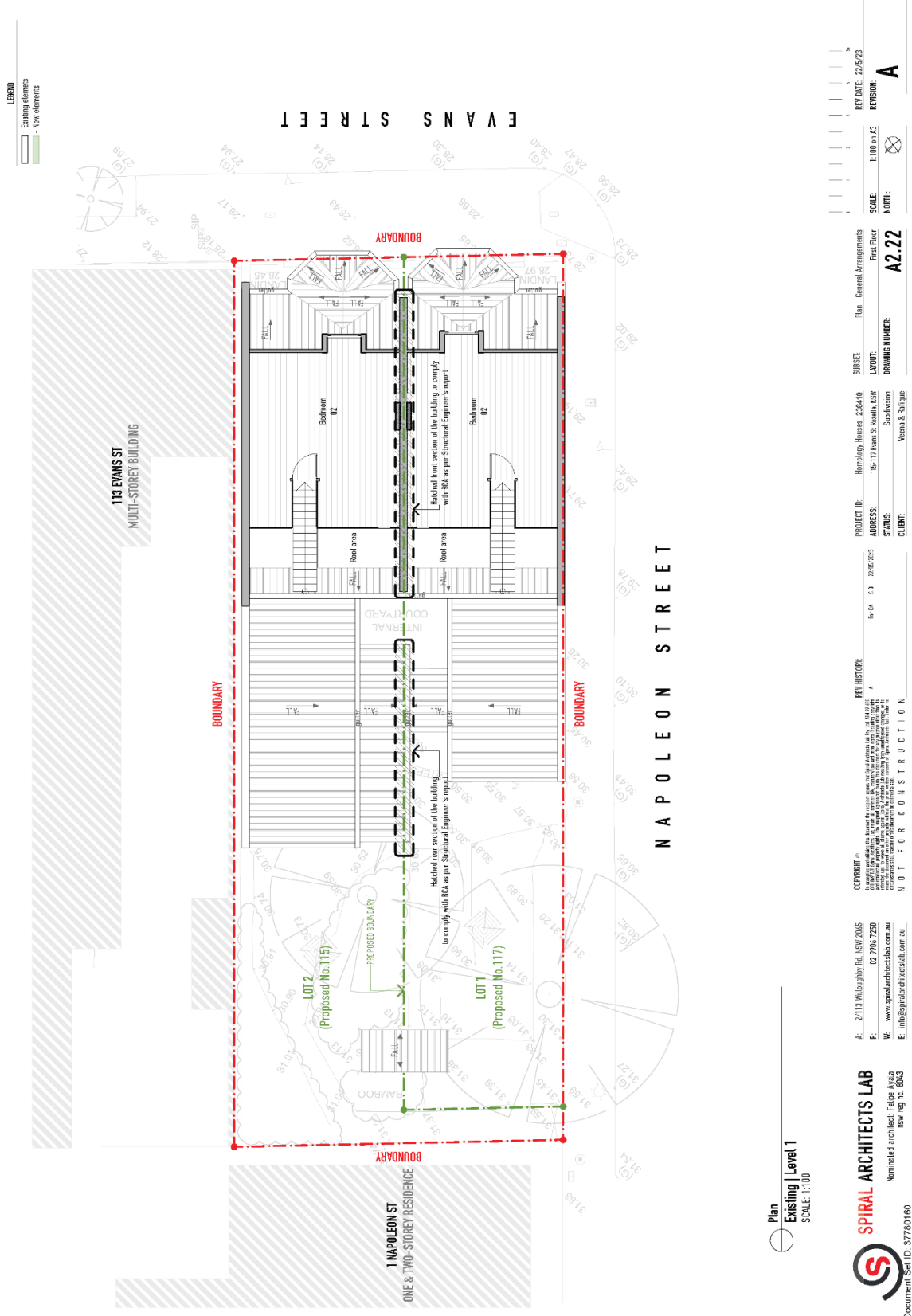
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 W: www.spiralarchitects.com.au
 E: info@spiralarchitects.com.au

REVISION HISTORY:
 Rev: 04 03 2023/2023
 Description: A
 Not for construction

PROJECT-ID: Heritage House 28440
ADDRESS: 115-117 Evans St, Leville, NSW
STATUS: Subdivision
CLIENT: Venes & Solfrigo

SUBSET: Ren - General Arrangements
LAYOUT: Ground Floor
DRAWING NUMBER: A2.21

SCALE: 1:100 (m A3)
NOTPH:
REVISION: A
REV DATE: 22/5/23



LEGEND
 - Existing elements
 - New elements

Plan
 Existing | Level 1
 SCALE: 1:100

SPIRAL ARCHITECTS LAB
 Newcastle architect: Felipe Ayres
 NSW reg. no. 8013

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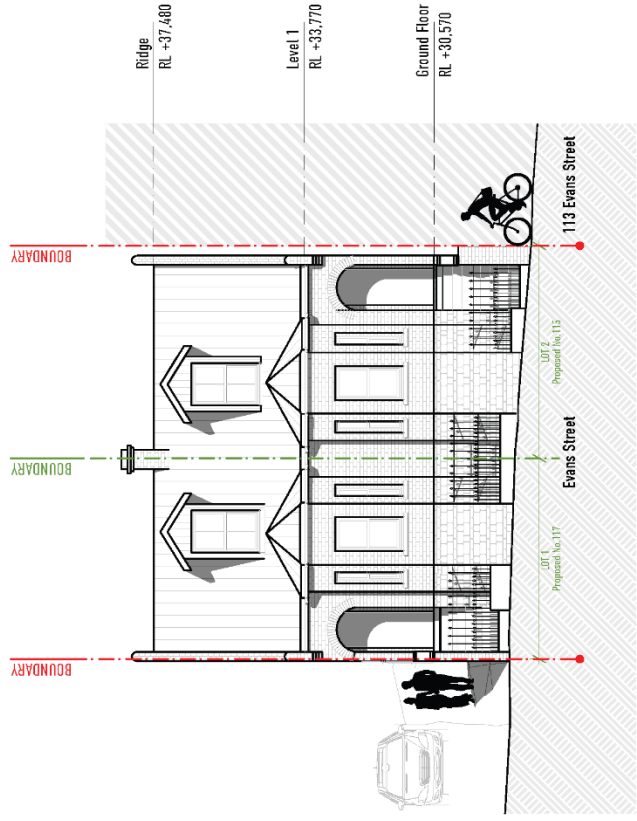
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PROJECT-ID: Heroldy House 20640
ADDRESS: 115-117 Evans St, Areola, NSW
STATUS: Subdivision
CLIENT: Venes & Solrue

REV DATE: 22/5/23
REVISION: A

SCALE: 1:100 (m A3)
NOTPH: [Symbol]

LEGEND
 - Existing elements
 - New elements



Plan
 East | Evans St
 SCALE: 1:100

SPIRAL ARCHITECTS LAB
 Newcastle architect | Felipe Ayres
 NSW reg. no. 8013

Document Set ID: 37790160
 Version: 1, Version Date: 05/06/2023

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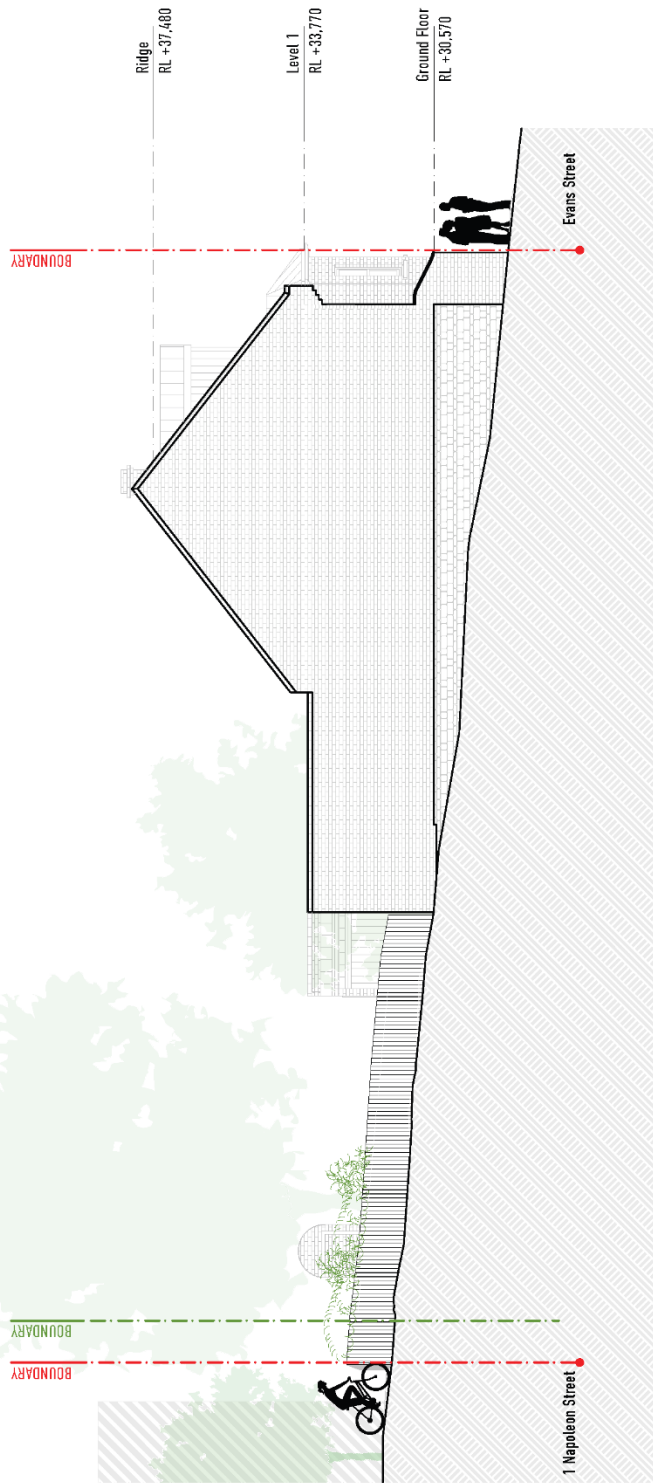
KEY HISTORY:
 A
 Rev: 03 25/02/2023

PROJECT-IP: Heroldy House, 284/40
 ADDRESS: 115-117 Evans St, Avala, NSW
 STATUS: Subdivision
 CLIENT: Venes & Solfrige

SUBSET: Heroldy House, 284/40
 LAYOUT:
 DRAWING NUMBER: **A3.01**

SCALE: 1:100 on A3
 NORTH:
 REV DATE: 22/5/23
 REVISION: **A**

LEGEND
 - Existing elements
 - New elements



Plan
 South | Napoleon St
 SCALE: 1:100

SPIRAL ARCHITECTS LAB
 Minimalist architect | Felipe Alves
 NSW Reg. No. 8013

A: 2/113 Milongga Rd, NSW 2005
 P: 02 9986 7230
 W: www.spiralarchitects.com.au
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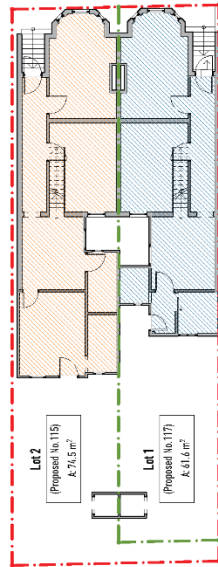
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PROJECT-IP: Heroldy House 28440
 ADDRESS: 115-117 Fines St, Leville, NSW
 STATUS: Subdivision
 CLIENT: Venes & Solinge

SUBSET: Elevation
 LAYOUT: Elevation 2
 DRAWING NUMBER: A3.02

SCALE: 1:100 on A3
 NORTH:
 REV DATE: 22/5/23
 REVISION: A

Document Set ID: 37750160
 Version: 1, Version Date: 05/06/2023

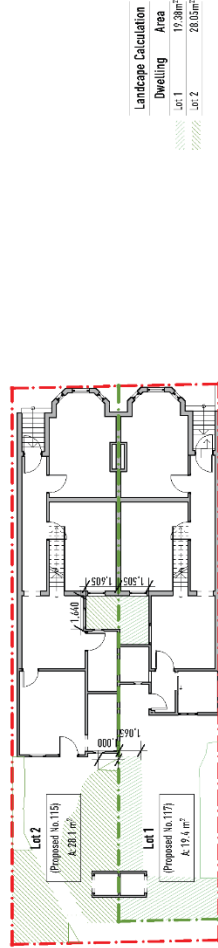


Plan
Existing GFA | Ground Floor
SCALE: 1:200

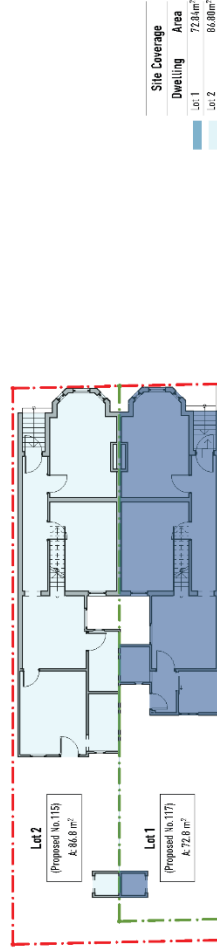


Plan
Existing GFA | Level 1
SCALE: 1:200

GFA Calculation		
Dwelling	Storey	Area
Lot 1	Ground Floor	61.57
	Level 1	24.53
		86.12 m ²
Lot 2	Ground Floor	74.45
	Level 1	29.43
		98.88 m ²



Plan
Landscape Area
SCALE: 1:200



Plan
Site Coverage
SCALE: 1:200



Document Set ID: 37790160
 Version: 1, Version Date: 05/06/2023

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PROJECT-IP: Heroldy House 28440
 ADDRESS: 115-117 From St. Avella, NSW
 STATUS: Subdivision
 CLIENT: Venes & Solrige

SUBSET: Supporting information
 LAYOUT: Landscape and Site Coverage
 DRAWING NUMBER: **A5.02**

SCALE: 1:200 (m A3)
 NORTH:

REV DATE: 22/5/23
 REVISION: **A**

Attachment C- Section 4.6 Exception to Development Standards

Chapman Planning Pty Ltd

Suite 8/88 Mountain Street
ULTIMO NSW 2007

Phone: 9560 1718
www.chapmanplanning.com.au

25 May 2023

Clause 4.6 Request to Contravene a Development Standard

Property Description: 115 - 117 Evans Street, Rozelle
Development: Torrens title subdivision of an existing Dual Occupancy
Development Standard: Minimum subdivision lot size

Introduction

This is a clause 4.6 request to contravene a development application for Torrens title subdivision of an existing dual occupancy development at 115 – 117 Evans Street, Rozelle. This clause 4.6 seeks contravention to the 200m² minimum subdivision lot size development standard contained in clause 4.1 – Minimum subdivision lot size of the *Inner West Local Environmental Plan 2021*.

The contravention to the minimum lot size is a result of the Torrens title subdivision of the existing dual occupancy on the site, allowing for each dwelling to be located on a separate allotment.

The proposed contravention is a result of the Torrens title subdivision reflecting the historical and practical use of the dual occupancy as separately leased dwellings. The resultant Torrens title allotments have been designed to ensure that each semi-detached dwelling will meet FSR, landscaped area and site coverage development standards contained within the *Inner West LEP 2021*.

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

Lot Number	Lot Size & Frontage width	FSR & GFA	Landscaped Area	Site Coverage
Lot 1 – 117 Evans Street	129m ² & 4.94m	0.67:1 & 86.12m ²	19.38m ² & 15.0%	72.84m ² & 56.5%
Lot 2 – 115 Evans Street	150.5m ² & 5.25m	0.66:1 & 98.88m ²	28.05m ² & 18.6%	86.80m ² & 57.7%

The proposed subdivision results in lots sized 129m² (Lot 1) and 150.5m² (Lot 2), presenting a contravention of 71m² / 35.5% and 49.5m² / 24.7%, respectively, to the minimum lot size standard of 200m².

1

Clause.4.6Request.LotSize.115EvansStreet.Rozelle.docx

Document Set ID: 37780189
Version: 1, Version Date: 05/06/2023

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) to ensure that lot sizes cater for a variety of development,*
- (b) to ensure that lot sizes do not result in 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.*

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

Objective (a) – The proposed allotments allow for a variety of development by legally separating the existing dual occupancy to become individual allotments that can be owned separately.

Objective (b) – The resultant lot sizes are capable of supporting the resultant semi-detached dwellings noting the subdivision relates to an existing dual occupancy development and will not present changes to built form as viewed from the streetscape. The use of the land remains the same, the subdivision simply regularizes the existing use of separately occupied housing. There will be no impact to amenity as a result of the proposed subdivision.

Objective (c) – The subdivision pertains to an existing dual occupancy and will not present changes to the built form as viewed from the streetscape. The proposed subdivision application includes the upgrade of the dividing wall to facilitate BCA compliance – fire separation between the dwellings.

Objective (d) – The proposed allotments are of a sufficient size to ensure compliance with the relevant FSR, landscaped area and site coverage development standards contained within the Inner West LEP 2021. The lot sizes and subdivision pattern will fit comfortably within the established subdivision pattern of the surrounding locality – The Valley 'Rozelle' Distinctive Neighbourhood within The Valley Heritage Conservation Area (C27). The existing built form and separation of the dwellings confirms the lots can support residential development in accordance with the character of the locality.

Objective (e) – The proposal will not impact riparian or environmentally sensitive land.

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

- The contravention to the minimum subdivision lot size standard is a result of subdividing an existing dual occupancy development to allow for each dwelling to be located on a separate lot and individually owned. It is noted that the resultant lots comply with the FSR, landscaped area, and site coverage development standards confirming that the lots can comfortably contain separate dwellings in accordance with the envisioned character of development under the LEP.
- The proposed subdivision regularizes an existing dual occupancy, with the resultant subdivision pattern complimenting the established pattern along Evans Street, noting the proposed lots have frontages of 4.94m and 5.25m consistent with the width of the existing built form and lots in the vicinity of the site. As such, the proposed subdivision will not have an adverse impact upon The Valley Heritage Conservation Area with respect to the established subdivision pattern.
- It is unreasonable to require compliance with the development standard as Council has stated in-principle support of the subdivision in the pre-DA assessment (reference PDA/2022/0296) of the proposal in December 2022. The proposed subdivision lot line responds directly to the layout of the existing dual occupancy on the site, with separate access provided from Evans Street to each lot.
- The resultant semi-detached dwellings are suitable for the subject site and compatible with the planning objectives and intended outcomes for the site and the objectives of the R1 – General Residential zone.

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

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

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

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

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

- The contravention to the minimum lot size standard is a result of the existing dual occupancy dwelling layout. The subdivision relates to an existing dual occupancy development and does not seek to increase residential density on the site beyond that of the existing development.
- The proposed subdivision compliments the established and predominant subdivision pattern of development along Evans Street. In this case, the resultant lots proposed are suitable for the subject site with respect to the established development context, and are compatible with the planning objectives and intended outcomes of the objectives of the R1 – General Residential zone.
- The contravention to the minimum lot size standard does not result in an overdevelopment of each lot as the resultant lots comply with the FSR, landscaped area, and site coverage development standards confirming that the lots can comfortably contain separate dwellings in accordance with the envisioned character of development under the LEP.
- The proposed contravention does not result in any significant environmental or amenity impacts when compared with a complying lot size. Dickson C confirmed in *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* (Paragraph 78) that the avoidance of impacts is an environmental planning ground as it promotes 'good design and amenity of the built environment' being an objective of the EPA Act.
- The contravention to the minimum subdivision lot size is consistent with the following relevant aims of the *Inner West LEP 2021* found at clause 1.2(2):
 - (2)(a) The contravention will result in a subdivision of the site that is a more efficient use of the energy and resources, given the lots will be able to be individually owned and managed.
 - (2)(f) The subdivision results in 2 x semi-detached dwellings on the subject site allowing for each dwelling to be owned under separate title, contributing to the diversity of housing to meet the needs of Inner West residents.
 - (2)(h)(i) The contravention does not result in any adverse social, economic or environmental impacts, given no there is no change to the built form of the structure.
- The contravention in lot size is consistent with the following objects of the Environmental Planning and Assessment Act, 1979 as follows:
 - 1.3(c) – The contravention promotes the orderly use of the land, by subdividing an existing dual occupancy allowing for each dwelling to be owned under separate title.
 - 1.3(f) – The contravention will result in a subdivision of the site that is compatible with the established subdivision pattern of The Valley Heritage Conservation Area, with lot frontages to Evans Street that are consistent with the nearby properties.
 - 1.3(g) – The contravention to the lot size control does not alter the design of the existing dual occupancy on the site, and does not result in

unreasonable amenity impacts to adjoining properties or the public domain with regard to overshadowing or loss of views.

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

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

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

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

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

The proposed development is in the public interest

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

Objective	Consistency
<i>To provide for the housing needs of the community.</i>	The proposal relates to an existing dual occupancy development.
<i>To provide for a variety of housing types and densities.</i>	The subdivision results in 2 x semi-detached dwellings on the subject site allowing for each dwelling to be owned under separate title, contributing to a variety of housing types within the locality.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The proposal relates to an existing dual occupancy development and does not change the use of the site.
<i>To provide residential development that maintains the character of built and natural features in the surrounding area.</i>	The proposed subdivision of the existing dual occupancy dwelling is consistent with the subdivision pattern within the local

	area. The built form will not change and therefore the character of the development is maintained when viewed within the context of the surrounding area.
<i>To ensure lot sizes cater for a variety of development.</i>	Subdivision will produce semi-detached dwellings that can be separately owned, and add to the variety of development in the area.
<i>To ensure lot sizes do not result in adverse amenity impacts.</i>	There is no proposed change to the overall existing built form. No amenity impacts will result from the subdivision.
<i>To ensure lot sizes deliver high quality architectural, urban and landscape design.</i>	The proposed subdivision will not alter the existing built form.
<i>To provide a pattern of subdivision that is consistent with the desired future character.</i>	The proposed subdivision results in dwellings that comply with FSR, landscaped area and site coverage controls of the Leichardt LEP, and are of built form envisaged by the planning objectives. Further, the proposed semi-detached dwellings are consistent with surrounding development.
<i>To ensure lot sizes allow development to be sited to protect and enhance riparian and environmentally sensitive land.</i>	The proposed subdivision will not impact riparian or environmentally sensitive land.

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

- The development proposal results the existing dual occupancy development to be separated into individual lots that comfortably accommodate each dwelling with adequate landscaped area and private open space, and complying site coverage and floor space ratios.
- The proposed subdivision would allow for the orderly development of the land contributing to housing choice within the locality, within a subdivision pattern that is consistent with the predominant and established subdivision pattern of nearby development within The Valley Heritage Conservation Area.
- The contravention to lot size is a direct result of subdividing an existing dual occupancy and the subdivision of the site has been supported in principle by Council in its pre-DA assessment of PDA/2022/0296.

Taking into consideration the above, the proposed development is in the public interest as it is consistent with the objectives of the development standard and the R1 General Residential zone under the *Inner West Local Environmental Plan 2022*.

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

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

The concurrence of the Secretary

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

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

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

The proposal is not likely to raise any matter of significance for State or regional environmental planning. As addressed above the contravention is consistent with the objectives of the development standard pursuant to the *Inner West Local Environmental Plan 2021*. The proposal is considered to be in the public interest because the proposed development is consistent with the objectives of the standard and the objectives of the R1 General Residential zone.

The public benefit of maintaining the development standard is not considered significant as a dual occupancy development is existing on the site, and the proposed subdivision will allow for each dwelling to be located on a separate lot with not change the existing built form. Further, the proposal demonstrates that each lot is of a sufficient size to accommodate a semi-detached dwelling that complies with the FSR, landscaped area and site coverage development standards contained in the *Inner West LEP 2021*.

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

Conclusion

The development proposal presents a contravention to the 200m² minimum subdivision lot size control contained in Clause 4.1 of the *Inner West LEP 2021*; notwithstanding this, the proposal allows for the subdivision of an existing dual occupancy on the site that

demonstrates that the resulting lot areas are capable of suitably accommodating semi-detached dwellings that comply with the FSR, landscaped area and site coverage standards contained in the LEP.

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

The proposed subdivision complements the established subdivision pattern of the properties to the north and south of the site within The Valley Heritage Conservation Area, with lot frontages to Evans Street that are consistent with nearby lots.

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

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

Chapman Planning Pty Ltd
Member PIA