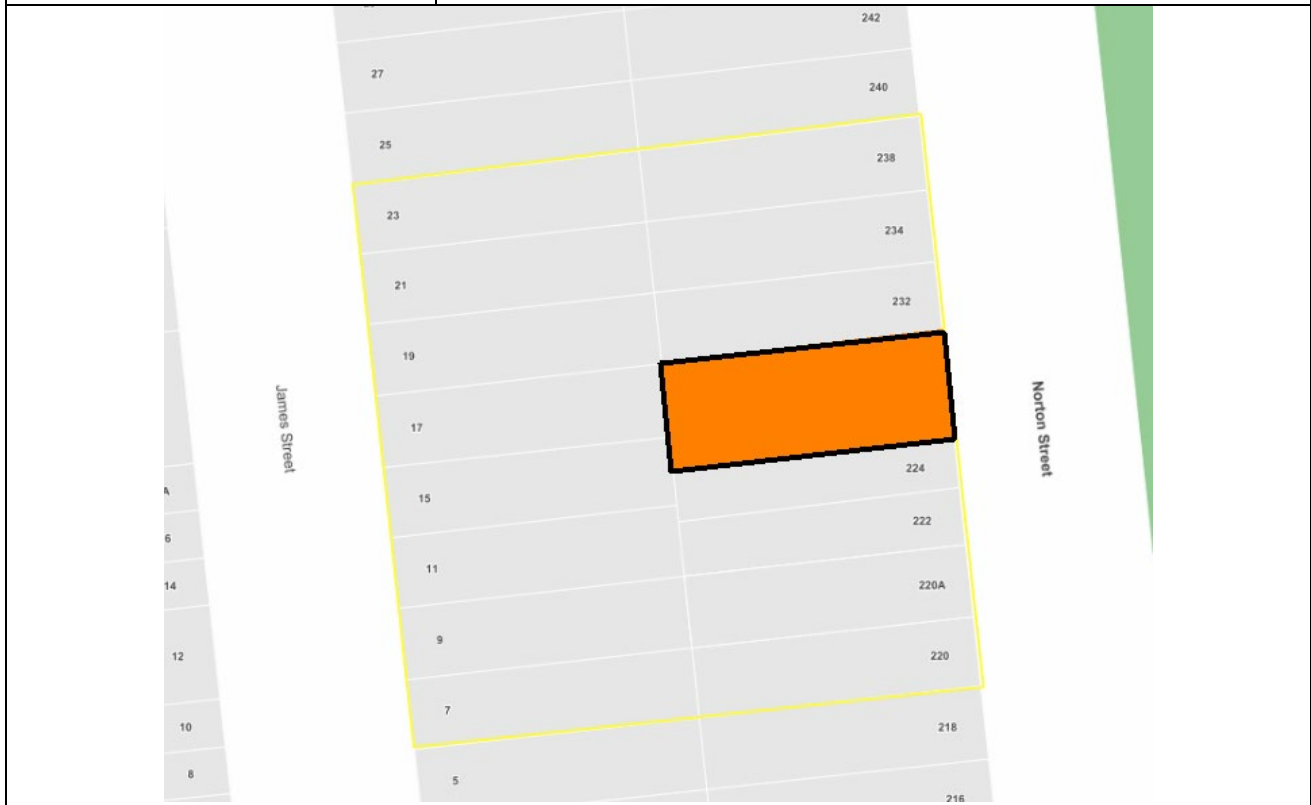




DEVELOPMENT ASSESSMENT PANEL REPORT

<b>Application No.</b>	DA/2024/0436
<b>Address</b>	226 Norton Street LEICHHARDT
<b>Proposal</b>	Torrens title subdivision of existing lot into two (2) allotments
<b>Date of Lodgement</b>	31 May 2024
<b>Applicant</b>	Elie Sleiman
<b>Owner</b>	Livin Properties Pty Ltd
<b>Number of Submissions</b>	Initial: 1 submission of support
<b>Cost of works</b>	\$16,500.00
<b>Reason for determination at Planning Panel</b>	Section 4.6 variation exceeds 10%
<b>Main Issues</b>	Subdivision
<b>Recommendation</b>	Approved with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Section 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

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

## 1 Executive Summary

This report is an assessment of the application submitted to Council for Torrens title subdivision of an existing lot into two (2) allotments at 226 Norton Street LEICHHARDT. The application was notified to surrounding properties and 1 submission was received in response to the initial notification.

The main issues that have arisen from the application include:

- Proposed lot size

The development standard breach is acceptable and satisfies the requirements of Section 4.6 of the IWLEP 2022. Therefore, the application is recommended for approval.

## 2. Proposal

The proposal seeks to Torrens Title subdivide the existing lot into two allotments, with each allotment measuring 174.1sqm in area.

## 3. Site Description

The subject site is located on the western side of Norton Street, between Allen Street and William Street. The site consists of one (1) allotment and is generally rectangular with a total area of 348.3 sqm and is legally described as LOT 1 in DP1295417.

The site has a frontage to Norton Street of approximately 11.43 metres.

The site supports an approved two-storey attached dual occupancy. The adjoining properties support single and two storey dwelling houses.

The property is identified as a flood prone lot.



Figure 1 - Zoning Map



Figure 2 - Photo of subject site

## 4. Background

### Site history

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

### **Subject Site**

<b>Application</b>	<b>Proposal</b>	<b>Decision &amp; Date</b>
DA/2022/0365	Consolidation of existing two (2) lots, demolition of existing structures and construction of a dual occupancy with Strata titled subdivision and associated works	Court Approved, 23/05/2023

### **Surrounding properties**

232 Norton Street, Leichhardt

<b>Application</b>	<b>Proposal</b>	<b>Decision &amp; Date</b>
M/2002/124	Modification of development consent D/2000/739 to amend condition 11 regarding shadowing devices.	Approved, 12/07/2002
D/2000/739	Demolition of the existing dwelling and erection of a new two storey dwelling.	Approved, 16/03/2001

## 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).

### **A. Environmental Planning Instruments**

The application has been assessed and the following provides a summary of the relevant Environmental Planning Instruments.

#### **State Environmental Planning Policies (SEPPs)**

##### SEPP (Resilience and Hazards) 2021

Chapter 4 Remediation of land

Section 4.6(1) of the *Resilience and Hazards 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.

SEPP (Biodiversity and Conservation) 2021

Chapter 6 Water Catchments

Section 6.6 under Part 6.2 of the *Biodiversity and Conservation SEPP* provides matters for consideration which apply to the proposal. The subject site is located within the designated hydrological catchment of the Sydney Harbour Catchment and is subject to the provisions contained within Chapter 6 of the above *Biodiversity Conservation SEPP*.

It is considered that the proposal remains consistent with the relevant general development controls under Part 6.2 of the *Biodiversity Conservation SEPP* and would not have an adverse effect in terms of water quality and quantity, aquatic ecology, flooding, or recreation and public access.

**Inner West Local Environmental Plan 2022**

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022 (IWLEP 2022)*.

**Part 1 – Preliminary**

Section	Proposed	Compliance
Section 1.2 Aims of Plan	The proposal satisfies the section as follows: <ul style="list-style-type: none"> <li>• The proposal conserves and maintains the natural, built and cultural heritage of Inner West,</li> <li>• The proposal prevents adverse social, economic and environmental impacts on the local character of Inner West,</li> <li>• The proposal prevents adverse social, economic and environmental impacts, including cumulative impacts</li> </ul>	Yes

**Part 2 – Permitted or prohibited development**

Section	Proposed	Compliance
Section 2.3 Zone objectives and Land Use Table  Zone R1 General Residential	<ul style="list-style-type: none"> <li>▪ The application proposes Torrens Title subdivision of one (1) existing lot into two (2) allotments, which is permissible with consent in the R1 Zone.</li> <li>▪ The proposal is consistent with the relevant objectives of the zone, as it will provide for a variety of housing types while maintaining the character of the surrounding area.</li> </ul>	Yes
Section 2.6 Subdivision – consent requirements	<ul style="list-style-type: none"> <li>• The application seeks development consent for the subdivision of the existing lot into two (2) Torrens title lots, which is permissible with consent.</li> </ul>	Yes

**Part 4 – Principal development standards**

Section	Proposed	Compliance
Section 4.1 Minimum Subdivision lot size	Minimum	200sqm
	Proposed	174.1sqm for each lot
	Variation	25.9sqm or 13% for each lot
Section 4.3C (3)(a) Landscaped Area	Minimum	15% or 26.12sqm
	Proposed	36.2% or 63.02sqm
	Variation	Nil
Section 4.3C (3)(b) Site Coverage	Maximum	60% or 104.46sqm
	Proposed	56.7% or 98.78sqm
	Variation	Nil
Section 4.4 Floor space ratio	Maximum	0.6:1 or 104.46sqm
	Proposed	0.59:1 or 102.73sqm
	Variation	Nil
Section 4.5 Calculation of floor space ratio and site area	The site area and floor space ratio for the proposal has been calculated in accordance with the section.	Yes
Section 4.6 Exceptions to development standards	The applicant has submitted a variation request in accordance with Section 4.6 to vary Section 4.1 Minimum Subdivision lot size.	See discussion below

**Section 4.6 – Exceptions to Development Standards**

Section 4.1 Minimum Subdivision lot size development standard

The applicant seeks a variation to the above mentioned under section 4.6 of the *IWLEP 2022* by 25.9sqm or 13% for each lot. Section 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

A written request has been submitted to Council in accordance with Section 4.6(3) of the *IWLEP 2022* justifying the proposed contravention of the development standard. 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.

***Whether compliance with the development standard is unreasonable or unnecessary***

In *Wehbe* at [42] – [51], Preston CJ summarises the common ways in which compliance with the development standard may be demonstrated as unreasonable or unnecessary. This is repeated in *Initial Action* at [16]. In the Applicant's written request, the first method described in *Initial Action* at [17] is used, which is that the objectives of the Minimum subdivision lot size standard are achieved notwithstanding the numeric non-compliance.

The **first objective of Section 4.1** is *"to ensure lot sizes cater for a variety of development"*. The written request states the proposed lot sizes will support semi-detached dwellings. Dwelling types along this section of Norton Street contain a mix of single and two storey detached, semi-detached, and attached dwellings. Accordingly, the breach is consistent with the first objective.

The **second objective of Section 4.1** is *"to ensure lot sizes do not result in adverse amenity impacts"*. The written request states the proposed lot sizes do not entail any building envelope changes to the existing development on the site and as such will not generate undue adverse amenity impacts. It is noted the proposal does not seek to undertake any physical works. Notwithstanding, it is considered the existing development has been designed to minimise adverse amenity impacts by way of overshadowing, visual and acoustic privacy, and flood behaviour on the subject and surrounding sites of a level contemplated by the Leichhardt Development Control Plan 2013. Accordingly, the breach is consistent with the second objective.

The **third objective of Section 4.1** is *"to ensure lot sizes deliver high quality architectural, urban and landscape design"*. The written request states the proposed lot sizes will support a building form and setting that reflects the architectural, urban and landscape design along this section of Norton Street, with the resulting subdivision maintaining the presentation of the semi-detached dwellings to the street frontage. It is considered the proposed allotments will be of a sufficient area and dimension to reinforce the architectural qualities of the existing dwellings and the visual prominence of landscape features within the curtilage of the site. Accordingly, the breach is consistent with the third objective.

The **fourth objective of Section 4.1** is *"to provide a pattern of subdivision that is consistent with the desired future character"*. The written request states the proposed allotments will be consistent with the east-west rectilinear pattern of subdivision in Norton Street. Furthermore, it contends the proposed lot width of 5.71m will be compatible with the prevailing lot frontages of surrounding development, being 5 to 6m. The size of the proposed lots is commensurate with those numerous existing undersized lots in the surrounding area. The built form of existing development, supported by undersized lots, is consistent with the prevailing streetscape character. The subject site is located in the Leichhardt Commercial Distinctive Neighbourhood

where numerous allotments are far less than the 200sqm requirement by Clause 4.1 of the *IWLEP 2022*, including:

- 222 and 224 Norton Street immediately to the south and 264, 266, and 268 Norton Street to the north
- Multiple properties along Norton Street between William Street and City West Link.
- Multiple properties along James Street to the west.

Accordingly, the breach is consistent with the fourth objective.

The **fifth objective of Section 4.1** is *“to ensure lot sizes allow development to be sited to protect and enhance riparian and environmentally sensitive land”*. The written request states the subject site does not contain or is in proximity to any environmentally sensitive land. Accordingly, the fifth objective is not applicable to the subject application.

As the proposal achieves the objectives of the Minimum Subdivision lot size standard, compliance is considered unreasonable and unnecessary in this instance.

***Whether there are sufficient environmental planning grounds to justify contravening the development standard***

Pursuant to Section 4.6(3)(b), the Applicant advances four (4) environmental planning grounds to justify contravening the Minimum Subdivision lot size development standard. Each will be dealt with in turn:

**Environmental Planning Ground 1** - *The proposed lot sizes and lot frontages allow for 2 x semi-detached dwellings which provide for a high level of internal amenity whilst having no unreasonable external amenity impacts.*

Comment: This environmental planning ground is accepted. While the proposed lot sizes are smaller than the minimum required, the resulting lots still achieve a level of amenity that is contemplated by the Leichhardt Development Control Plan 2013, retaining a highly usable quantum of private open space and internal living areas without compromising the residential amenity of surrounding development.

**Environmental Planning Ground 2** - *The east-west orientation of the allotments and the respectful nature of the building footprint and scale ensure that solar access is retained to the neighbouring properties to the north and south. In this regard, it is reiterated that there are no visual bulk, streetscape, shadow, or view impacts.*

Comment: This environmental planning ground is accepted. While the proposed lot sizes fall below the average size of allotments in this section of Norton Street by a minor amount, the proposed width of the resulting lots reflect the prevailing character of frontages found in the streetscape and ensures the overall appearance of the neighbourhood remain harmonious. It is noted that no physical changes are proposed to the existing development on the subject site. Notwithstanding, the proposed lot sizes ensure an adequate level of solar access is provided to the POS areas of the resulting lots and will not give rise to any negative impacts to surrounding development.

**Environmental Planning Ground 3** - *The setbacks remain as existing from the previously approved development application DA/2022/0365.*

Comment: This environmental planning ground is accepted. The proposed lot sizes will be of a dimension which complements the siting, scale, and form of adjoining development and the semi-detached building typology of the site.

**Environmental Planning Ground 4** - *The proposed development thereby represents an orderly and economic use of the site, with no adverse environmental impacts beyond that if the lots were each 200sqm.*

Comment: This environmental planning ground is accepted. The proposed variation in lot size will not inhibit the subject site and surrounding development from being reasonably developed in a manner that maintains the orderly continuity of the streetscape with an appropriate level of residential amenity.

Cumulatively, the grounds are considered sufficient to justify contravening the development standard.

For the reasons outlined above, it is recommended that the section 4.6 exception be granted.

**Part 5 – Miscellaneous provisions**

The application is not located within a Heritage Conservation Area or identified as a heritage item, and will not affect the flood function and behaviour of the subject site.

**Part 6 – Additional local provisions**

Section	Proposed	Compliance
Section 6.1 Acid sulfate soils	<ul style="list-style-type: none"> <li>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.</li> </ul>	Yes

**B. Development Control Plans**

**Summary**

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

LDCP 2013	Compliance
<b>Part C</b>	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes



C1.6 Subdivision	Yes – see discussion
C1.7 Site Facilities	Yes
C1.12 Landscaping	Yes
<b>Part C: Place – Section 2 Urban Character</b>	
C2.2.3.5 Leichhardt Commercial Distinctive Neighbourhood	Yes
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes
C3.5 Front Gardens and Dwelling Entries	Yes
C3.8 Private Open Space	Yes

The following provides discussion of the relevant issues:

C1.6 Subdivision

The proposed development seeks Torrens title subdivision of an existing lot at 226 Norton Street, Leichhardt. The proposed subdivision does not comply with the minimum subdivision allotment size requirements of Control C1 at Part C1.6 of the LDCP 2013, which requires new allotments to have a minimum lot size of 200sqm. Therefore, further consideration is given to Objectives O1(a), (b), (c), (d), (f), (g) and (h) at Part C1.6 of the LDCP 2013.

Objective	Assessment
Objective O1(a)	<p>This objective aims to ensure that new subdivisions create lots of sufficient area and dimensions to accommodate residential development that aligns with the controls for residential development outlined in the LDCP 2013. It is considered the resulting lots will provide adequate separation between adjoining development to enhance residential amenity by way of privacy and solar access to private open space areas and preserve the visual setting of existing dwellings as they appear in the streetscape.</p> <p>Accordingly, the proposed subdivision is consistent with objective O1(a).</p>
Objective O1(b)	<p>This objective aims to ensure new lots are consistent with the prevailing subdivision pattern of the neighbourhood. The subject site, which is located in the ‘Norton Street – Residenziale’ sub area of the Leichhardt Commercial Distinctive Neighbourhood, is characterised by small residential frontages with a predominantly east-west orientation. Given this, the proposed subdivision will be consistent with the established street grid and preserve the continuity of narrow frontages within the streetscape. Furthermore, the proposed subdivision is consistent with numerous existing undersized lots in the surrounding area, which has been demonstrated in the Applicant’s Section 4.6 request.</p> <p>Accordingly, the proposed subdivision is consistent with objective O1(b).</p>

Objective O1(c)	<p>This objective aims to ensure development incorporates significant natural landscape features. The proposed subdivision has been designed to reflect the existing slope of the subject site, providing a sufficient area of landscaped open space to support vegetation along boundaries and future canopy growth on the subject and neighbouring sites.</p> <p>Accordingly, the proposed subdivision is consistent with objective O1(c).</p>
Objective O1(d)	<p>This objective aims to ensure development facilitates safe, convenient, and comfortable movement. The proposed subdivision does not entail any changes to the existing street grid, and as such maintains the permeability of the surrounding street network.</p> <p>Accordingly, the proposed subdivision is consistent with objective O1(d).</p>
Objective O1(f)	<p>This objective aims to ensure development provides a high level of safety and security. The resulting lots of the proposed subdivision are oriented to address the street, providing both direct access to a safe, separate pedestrian footpath and a high level of engagement with the adjacent public open space at Pioneers Memorial Park.</p> <p>Accordingly, the proposed subdivision is consistent with objective O1(f).</p>
Objective O1(g)	<p>The objective aims to ensure development provides appropriate infrastructure. The resulting lots are serviced by separate infrastructure and services for drainage, utilities, waste collection and mail delivery, and will maintain direct access to public roads for emergency response.</p> <p>Accordingly, the proposed subdivision is consistent with objective O1(g).</p>
Objective O1(h)	<p>This objective aims to ensure development enables lots to achieve a high level of energy efficiency. The proposed subdivision has been designed to orient the resulting lots in a manner which maximises natural ventilation and daylight access, whilst ensuring compatibility with the prevailing subdivision pattern of the neighbourhood.</p> <p>Accordingly, the proposed subdivision is consistent with objective O1(h)</p>

Considering the above, the proposed development achieves the relevant objectives under Part C1.6 of the LDCP 2013 and can be supported on merit.

### C. The Likely Impacts

These matters have been considered as part of the assessment of the development application. It is considered that the proposed development will not have significant adverse environmental, social or economic impacts upon the locality.

## **D. The Suitability of the Site for the Development**

The proposal is of a nature in keeping with the overall function of the site. The premises are in a residential surrounding and amongst similar uses to that proposed.

## **E. Submissions**

The application was required to be notified in accordance with Council's Community Engagement Strategy between 06 June 2024 to 20 June 2024.

A total of 1 submission of support was received in response.

## **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.

This has been achieved in this instance.

## **6. 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 premises/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.

## 7. Recommendation

- A. The applicant has made a written request pursuant to 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 Subdivision Lot Size standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variations. 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/2024/0436 for Torrens title subdivision of existing lot into two (2) allotments at 226 Norton Street, Leichhardt subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### CONDITIONS OF CONSENT

#### GENERAL CONDITIONS

Condition								
1.	<b>Documents related to the consent</b>							
	The development must be carried out in accordance with plans and documents listed below:							
	<table border="1"> <thead> <tr> <th>Plan, Revision and Issue No.</th> <th>Plan Name</th> <th>Date Issued/Received</th> <th>Prepared by</th> </tr> </thead> <tbody> <tr> <td>J13766, Sheet 1 of 1</td> <td>Plan of Proposed Subdivision of Lot 1 in DP122410 and Lot 12 Sec. A in DP1663</td> <td>25/03/2024</td> <td>Robert Davidson</td> </tr> </tbody> </table>	Plan, Revision and Issue No.	Plan Name	Date Issued/Received	Prepared by	J13766, Sheet 1 of 1	Plan of Proposed Subdivision of Lot 1 in DP122410 and Lot 12 Sec. A in DP1663	25/03/2024
Plan, Revision and Issue No.	Plan Name	Date Issued/Received	Prepared by					
J13766, Sheet 1 of 1	Plan of Proposed Subdivision of Lot 1 in DP122410 and Lot 12 Sec. A in DP1663	25/03/2024	Robert Davidson					
As amended by the conditions of consent. Reason: To ensure development is carried out in accordance with the approved documents.								

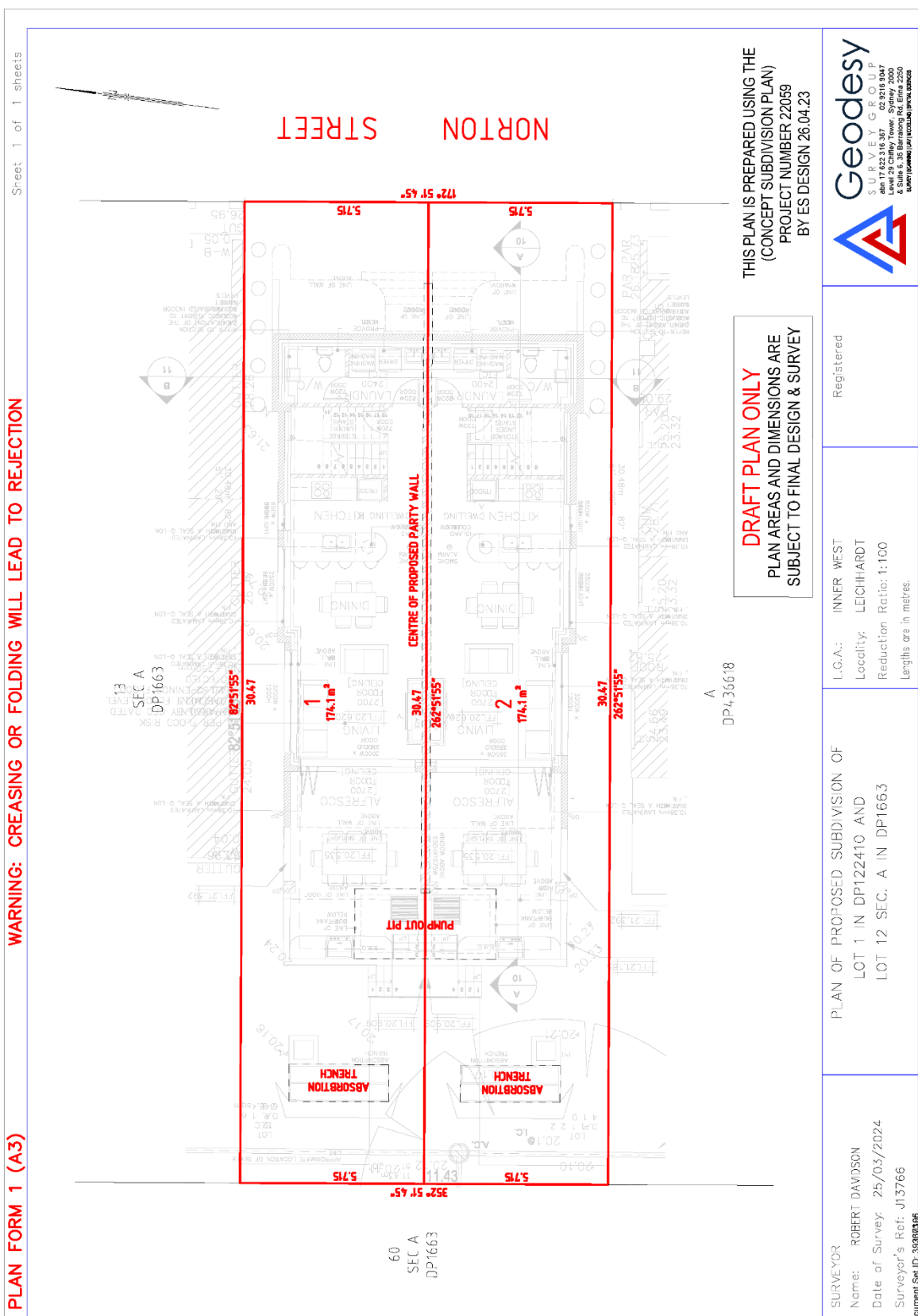
#### SUBDIVISION WORK

##### BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

Condition	
2.	<b>Street Numbering</b> 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. <a href="https://www.innerwest.nsw.gov.au/live/information-for-residents/roads-and-footpaths/how-to-apply-for-a-street-number">https://www.innerwest.nsw.gov.au/live/information-for-residents/roads-and-footpaths/how-to-apply-for-a-street-number</a> Reason: To ensure works are in accordance with the consent and adequate on-site facilities are provided for the development.
3.	<b>Separate Drainage Systems</b> 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. Reason: To ensure that the adequate provision of stormwater drainage is provided.
4.	<b>Release of Subdivision Certificate</b> Prior to the release of a Subdivision Certificate, the Certifying Authority must be provided with a copy of the Final Occupation Certificate.

	Reason: To ensure development is completed before the subdivision certificate is released.
--	--

Attachment B – Plans of proposed development



Sheet 1 of 1 sheets

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

PLAN FORM 1 (A3)

THIS PLAN IS PREPARED USING THE  
(CONCEPT SUBDIVISION PLAN)  
PROJECT NUMBER 22059  
BY ES DESIGN 26/04/23

**DRAFT PLAN ONLY**  
PLAN AREAS AND DIMENSIONS ARE  
SUBJECT TO FINAL DESIGN & SURVEY



Registered

L.G.A.: INNER WEST  
Locality: LEICHHARDT  
Reduction Ratio: 1:100  
Lengths are in metres.

PLAN OF PROPOSED SUBDIVISION OF  
LOT 1 IN DP122410 AND  
LOT 12 SEC. A IN DP1663

SURVEYOR  
Name: ROBERT DAVIDSON  
Date of Survey: 25/03/2024  
Surveyor's Ref: J13766  
Document Set ID: 32920366  
Version 1, Version Date: 08/05/2024

## Attachment C – Section 4.6 Exception to Development Standards



### APPENDIX 1

CLAUSE 4.6 TO CLAUSE 4.1 OF INNER WEST LEP 2022

#### EXCEPTIONS TO DEVELOPMENT STANDARDS – **MINIMUM SUBDIVISION LOT SIZE VARIATION**

Torrens title subdivision of strata titled dual occupancy dwellings

226 NORTON STREET, LEICHHARDT

PREPARED BY

ABC PLANNING PTY LTD

MAY 2024

p 02 9310 4979 ■ m 0412 622 643

e [anthony@abcplan.com.au](mailto:anthony@abcplan.com.au)

PO Box 6081 MALABAR NSW 2036 ■ ABN 99 090 382 488



**INNER WEST LEP 2022 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS**

This Clause 4.6 submission has been prepared in support of the proposal for the Torrens title subdivision of the approved, under construction, strata titled dual occupancy dwellings at 226 Norton Street, Leichhardt.

The proposal seeks a variation to the development standards contained within Clause 4.1 of the *Inner West Local Environmental Plan 2022* – minimum lot size of 200m<sup>2</sup>.

The subject site has a total site area of 348.2m<sup>2</sup>. The development proposes two new allotments, with Lot 1 having a site area of 174.1m<sup>2</sup> and Lot 2 having a site area of 174.1m<sup>2</sup>. This represents a variation to the minimum subdivision lot size of by 13% or 25.9m<sup>2</sup> for both lots, as shown below:

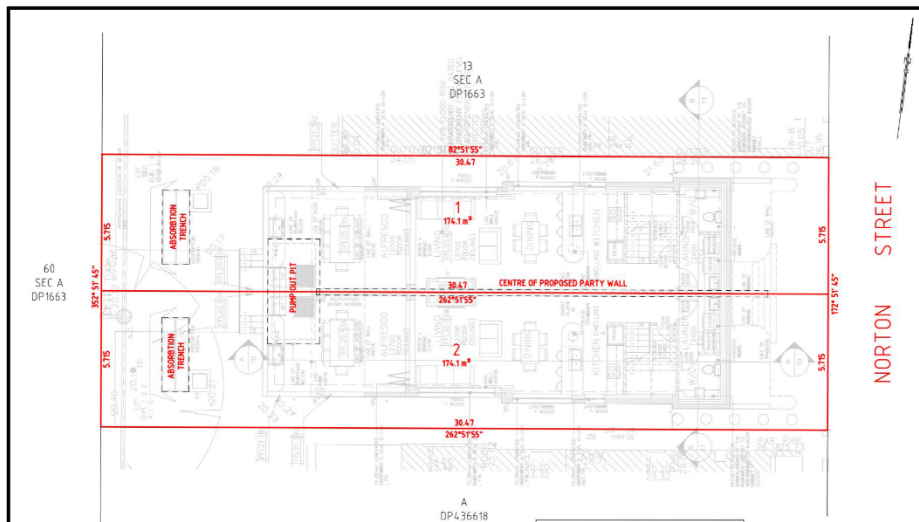


Figure 1: Excerpt of proposed subdivision of Lot 1 in DP122410 and Lot 12 Section A in DP1663

This submission contends that strict compliance with the minimum lot size is unreasonable and/or unnecessary in the circumstances of the case and that the variation sought can be supported and that the Clause 4.6 exception to the development standard should be upheld.

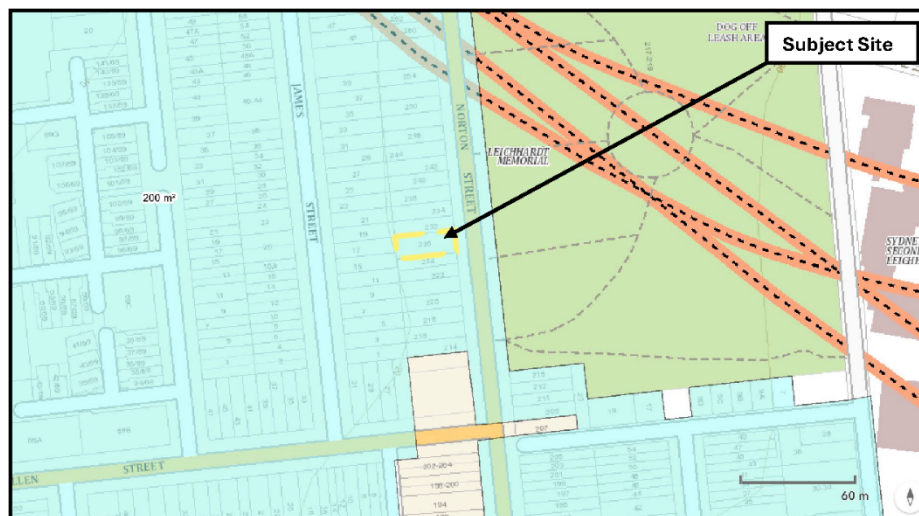


Figure 2: Minimum subdivision lot size map (200sqm lot sizes)

**Clause 4.6 Exceptions to development standards**

- (1) The objectives of this clause are as follows—
  - a. to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - b. to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—
  - a. compliance with the development standard is unreasonable or unnecessary in the circumstances, and
  - b. there are sufficient environmental planning grounds to justify the contravention of the development standard.
- (4) The consent authority must keep a record of its assessment carried out under subclause (3).
- (5) (Repealed)
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
  - a. the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - b. the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) (Repealed)
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
  - a. a development standard for complying development,
  - b. a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State

*Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*

**Compliance with the development standard is unreasonable or unnecessary in the circumstances - Clause 4.6(3) (a)**

The following assessment demonstrates that the following circumstances render the development standard unreasonable and unnecessary:

- Minor degree of the departure (13%)
- Indiscernible degree of the departure which would not have any perceptible impacts on the streetscape along Norton Street
- Consistency with the pattern, shape and orientation of allotments and development along the western side of Norton Street, noting that the eastern side consists of parkland
- Inconsequential nature of the departure in relation to streetscape, housing and amenity outcomes
- Indiscernible change from strata to Torrens title
- The departure does not compromise the ability to provide for dwellings with meet with or outperform the requirements within the LEP and DCP for semi-detached dwellings
- The provision of 2 allotments on this site with high quality semi-detached housing is consistent with the Sydney Metropolitan Strategy 2036
- Council and the Court have varied the minimum allotment size in the Municipality

It is considered that the variation of 13% represent a minor variation which would not be discernible from the size of lots contemplated by the LEP as being appropriate for the R2 Low Density Residential zone.

The proposed lots will contain 2-semi-detached dwellings that that are permissible under Inner West LEP 2022. The design of the attached dual occupancy dwellings is considered to be a high-quality design approved via Section 34 agreement under DA/2022/0365. It is noted that such uses and forms are located along both sides of Norton Street. These types of dwellings are considered to form both the existing and desired future character.

It should also be noted that the presentation of strata attached dual occupancies and Torrens title semi-detached dwellings appear the same to the casual observer, noting that they are divided by fencing and have separate entries, letterboxes, garages etc.



Figure 3: Subject site as viewed from Norton Street during construction, noting the casual observer is unable to discern whether the property consists of strata attached dual occupancies or torrens title semi-detached dwellings



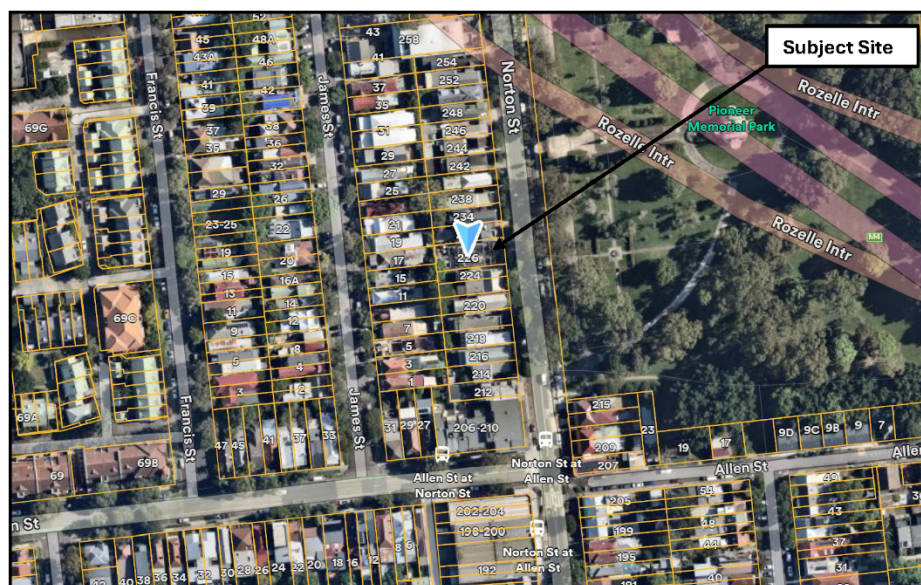
Figure 4: 232 Norton Street, to the north of the subject site with a similar frontage size as the proposed subdivision lot sizes



**Figure 5: 222 and 224 Norton Street, semis to the south of the subject site with a similar frontages and lot sizes as the proposed lot frontages/sizes**

It is noted that the east west lots remain the same prior and post subdivision, however, by subdividing the lots, the use of the site becomes more orderly as it avoids the complexities associated with strata titled properties (costs and requirement for permission of minor works). This subdivision does not influence any amenity impacts across the boundaries. The size of the proposed allotments are suitable for development, as there will be no changes to the existing development being developed.

The aerial photo with cadastral boundaries demonstrates that the character of the street is primarily composed of narrow lots and semi-detached dwellings. Given the consistency of the proposed lots with the site frontages in the neighbourhood and that the lots are consistent with the east-west rectilinear pattern of subdivision, is confirmed that the proposed lots will provide a cohesive and appropriate outcome in the neighbourhood.



**Figure 6: Aerial image showing the subdivision consistency of the street and the irregular of the subject site at 226 Norton Street**

The east-west orientation of the rectangular shaped allotments will be consistent and compatible with the predominant patterns of subdivision along Norton Street whilst the lot frontages will also be compatible with the presentation of the approved semi-detached dwellings of 232 Norton Street to the north and 222/224 Norton Street to the south.

As noted above in figure 6, the lot frontages of the adjoining and surrounding developments are approximately 5 to 6m. The proposed frontages would equate to 5.715m which would be consistent and compatible with the predominant patterns of subdivision along Norton Street.

The proposed lot sizes have no adverse impact on the property or surrounding properties due to the fact that the development on the lot is a strata title attached dual occupancy dwellings. There is no change to the building envelope.

The 200sqm minimum allotment size is a development standard which is subject to Clause 4.6 and is therefore subject to flexibility as per the provisions of Clause 4.6. The above assessment demonstrates that flexibility should be applied in this circumstance, noting that any lot below 200sqm is not prohibited.

It is noted that each application for subdivision should be considered in relation to its own context and set of circumstances.

Nevertheless, 2 examples of departures to the development standard for minimum subdivision lot size include:

- 3 Emily Street, Leichhardt. DA/2022/0795 - (variation extent: 11.76% or 23.52sqm)
- 54 Church Street, Birchgrove. DA/2023/0254 – (variation extent: 37%)

The above departures demonstrate that it has been determined that variations from the minimum allotment size have been deemed to be appropriate in certain circumstances, which confirms that the lot size should be considered in a flexible nature.

It is thereby considered that the minor extent of the variation combined with consistency/compatibility with the built form and presentation of dwellings ensures that the development standard is unreasonable or unnecessary in this context.

***There are sufficient environmental planning grounds to justify the contravention of the development standard – Clause 4.6(3)(b)***

As outlined above, the proposed lot sizes and lot frontages allow for 2 x semi-detached dwellings which provide for a high level of internal amenity whilst having no unreasonable external amenity impacts.

The east-west orientation of the allotments and the respectful nature of the building footprint and scale ensure that solar access is retained to the neighbouring properties to the north and south. In this regard, it is reiterated that there are no visual bulk, streetscape, shadow, or view impacts.

The setbacks remain as existing from the previously approved development application DA/2022/0365.

The proposed development thereby represents an orderly and economic use of the site, with no adverse environmental impacts beyond that if the lots were each 200sqm.

Such justification is considered to constitute sufficient environmental grounds.

**4.1 Minimum Lot Size objectives assessment**

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

- a. to ensure lot sizes cater for a variety of development,

**Assessment:** The above assessment which demonstrates that there are sufficient environmental grounds to support the proposal is also considered to confirm that the objectives of the standard are satisfied.

It is reiterated that the proposed lot sizes cater for the development of attached dual occupancy dwellings into 2 Torrens title semi-detached dwellings.

The above assessment demonstrates that the proposed lot sizes and development meet the objectives of the standard, notwithstanding the numeric variation.

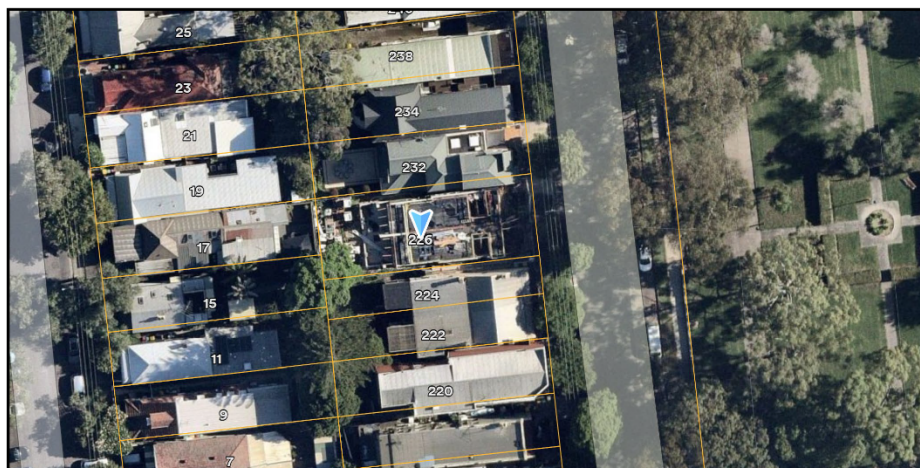
- b. to ensure lot sizes do not result in adverse amenity impacts,

**Assessment:** As stated above there are no adverse amenity impacts to the property or neighbouring properties as the development on the site has been previously approved by the Court via a Section 34 agreement with Council under DA/2022/0365. There are no physical changes to the approved built form nor to the amenity of the approved dwellings/lots. There are no shadow, privacy, view or visual bulk implications generated by the change from strata to Torrens title subdivision.

- c. to ensure lot sizes deliver high quality architectural, urban and landscape design,

**Assessment:** As stated above there are no impacts to the property or neighbouring properties from the subdivision lots as the development on the site has been previously approved by the Court in a Section 34 agreement under DA/2022/0365.

- d. to provide a pattern of subdivision that is consistent with the desired future character,



**Figure 7: Aerial image showing the subdivision consistency of the street and the irregular of the subject site at 226 Norton Street**



**Assessment:** The subdivision of the lots is consistent with the desired future character and remains consistent with the pattern and rhythm of Norton Street. This is evident from Figure 7, as the surrounding properties are primarily composed of narrow subdivided lots with 226 Norton Street being the anomaly in this aerial image. The development DA/2022/0365 was approved by council, meeting the desired future character of this neighbourhood.

- e. to ensure lot sizes allow development to be sited to protect and enhance riparian and environmentally sensitive land.



Figure 8: Subject site with DA/2022/0365 under construction

**Assessment:** The subdivided lot sizes will have no change or affect development which is sited at 226 Norton Street. The subject site does not contain any environmentally sensitive land nor is it in proximity to any such land. The subdivision will be indiscernible from the casual observer and will have no negative effects. The development application for the built form has been approved via Section 34 agreement under DA/2022/0365 and no further works are generated by the proposed subdivision.

**Other matters - Consistency with State and Regional planning policies**

**Assessment:** The proposed variation does not raise inconsistency with State or Regional Policies. On the contrary, the provision of 2 semi-detached dwellings provides for the orderly and economic use of land as envisaged by the Act.

**Conclusion**

The above assessment has demonstrated that strict compliance with the minimum allotment size standard is unnecessary and unreasonable in the circumstances and that there would be no benefit in maintaining the standard in this instance.

It has been demonstrated that the proposed lot sizes meet the objectives of the standard as well as the objectives of the zone to an equal or better degree to a site with a compliant allotment size.

It is considered that the provision of 2 Torrens title semi-detached dwellings will be compatible with the existing and desired future character whilst there are no external impacts which would demonstrate that the lot sizes are inadequate.

On the above basis, it is considered that there are sufficient grounds to permit the minor variation to the minimum allotment size standard within Inner West LEP 2022.