



NSLPP MEETING HELD ON 04/06/2025

Attachments:

1. Site Plan
2. Plan of Subdivision
3. Clause 4.6 Variation (Lot Size)

ADDRESS: 47 Devonshire Street, Crows Nest

APPLICATION NO: DA 420/2024

PROPOSAL: Torrens Title subdivision of existing dual occupancy (attached) and change of use of to semi-detached dwellings

PLANS REF:

| Plan No. | Issue | Description | Prepared by | Dated |
|----------|-------|------------------------------|-------------|-------|
| Sheet 1 | - | Proposed Plan of Subdivision | - | - |

OWNER: Mark Hepner

APPLICANT: Tony Polvere

AUTHOR: Report of Jack Varka, Senior Assessment Officer

DATE OF REPORT: 5 May 2025

DATE LODGED: 22 January 2025

RECOMMENDATION: Approval

EXECUTIVE SUMMARY

This development application seeks consent for a Torrens title subdivision of a dual occupancy (attached) from one lot into two and subsequent change of use to two semi-detached dwellings at 47 Devonshire Street, Crows Nest.

The application is reported to the North Sydney Local Planning Panel for determination as the application seeks a variation to a development standard by more than 10%.

The subject site, legally described as Lot B DP 338733 is known as 47 Devonshire Street, Crows Nest and is currently occupied by a single storey dual occupancy. The site is located at the “elbow” of Devonshire Street where it intersects Huntington Street.

The proposal seeks the legal Torrens subdivision of the site into two separate lots, with no physical works proposed. As a result of the subdivision, the land use would change to that of a pair of semidetached dwellings based on the definition in the standard instrument. The development is permitted within the R2 Low Density Residential zone.

The proposed subdivision results in a non-compliance with the minimum subdivision lot size development standard in Clause 4.1 of the *North Sydney Local Environmental Plan 2013*. The existing lot has an area of 385.7m² and the resultant lot size for proposed Lot 1 is 191.5m², and 194.4m² for Lot 2. The proposal results in a variation to both Lots 1 and 2 of 15% and 16% respectively.

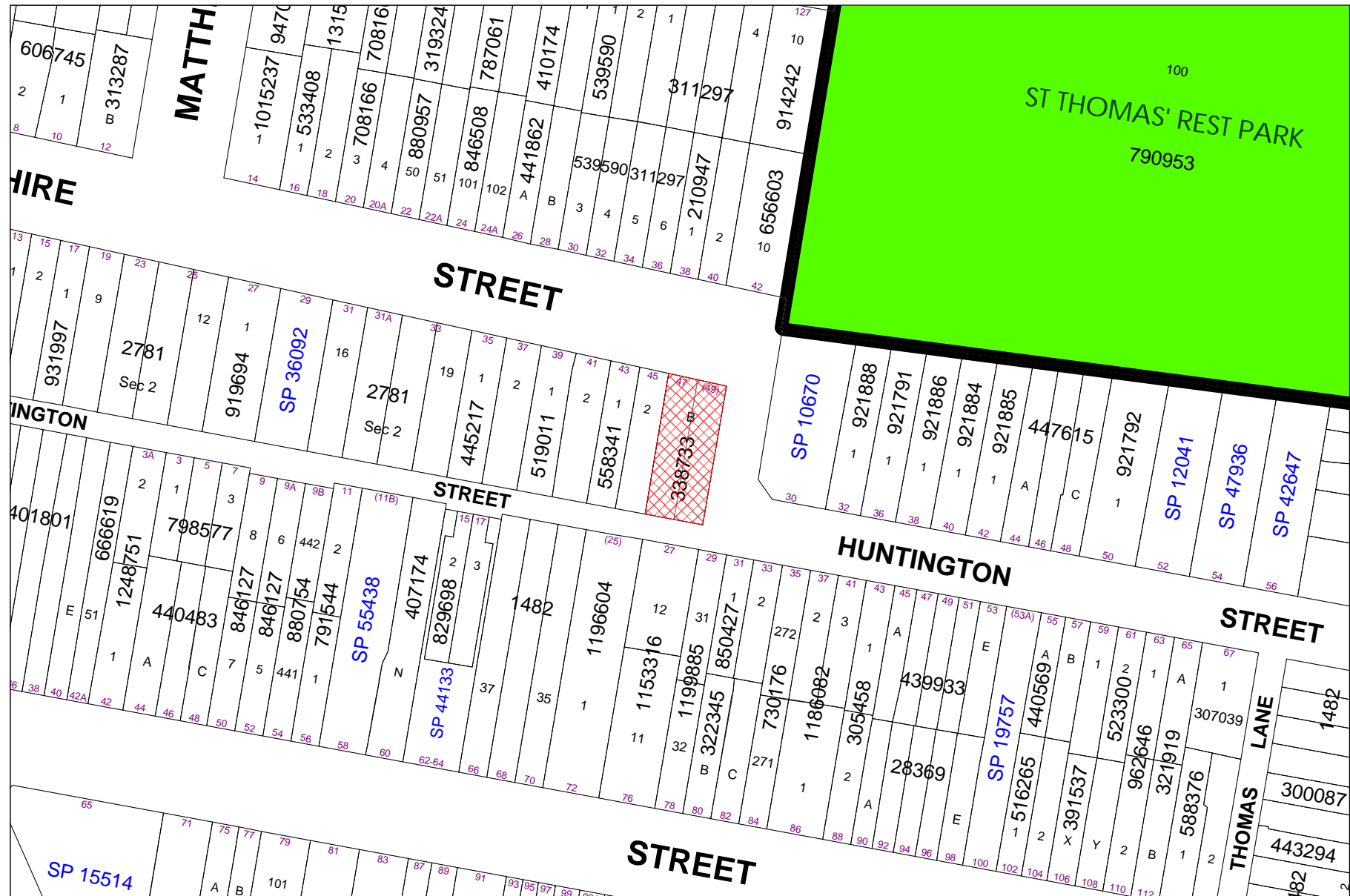
A written request has been submitted pursuant to clause 4.6 in *NSLEP 2013* which demonstrates that compliance with the development standard is unreasonable and unnecessary as the objectives of the standard are achieved notwithstanding the variation, and that there are sufficient environmental planning grounds to justify the variation in the circumstances of the case.

The proposal was notified between 7 to 21 March 2025 and no submissions were received in response.

As the proposal does not include any physical works to the dwelling and reflects the existing subdivision pattern there would be no significant impact on the existing amenity levels of neighboring dwellings in terms of overshadowing, view loss and acoustic and visual privacy. Moreover, the proposal would be consistent with the subdivision pattern of the street. This is discussed further herein.

Following this assessment the development application is considered to be reasonable in the circumstances and is recommended for **approval** subject to conditions.

LOCATION MAP



Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The proposal is seeking for the Torrens Title subdivision of the site and subsequent change of use from dual occupancy (attached) to semi-detached dwelling. The details of the subdivision are as follows:

- Proposed Lot 1 – 191.5m²
- Proposed Lot 2 – 194.4m²

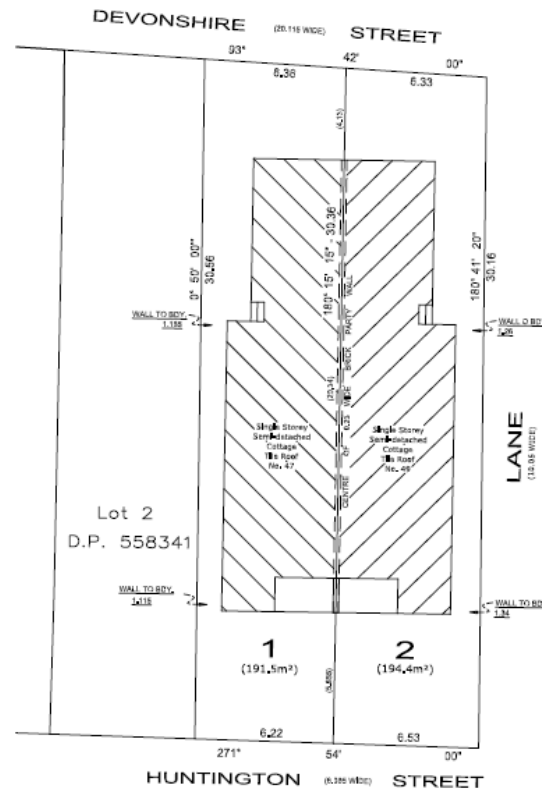


Figure 1: Proposed Torrens Title Subdivision

Referral to NSLPP

The application is reported to NSLPP for determination because the proposed Torrens Title subdivision breaches the minimum lot size standard of 230m² for the site. The proposed subdivision seeks a variation that exceeds more than 10% of the standard for proposed Lot 1 (191.5m²) and for proposed Lot 2 (194.4m²).

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – R2 Low Density Residential
- Item of Heritage - No
- In Vicinity of Item of Heritage – Yes (St Thomas Rest Park)
- Conservation Area – Holtermann Estate A

Environmental Planning & Assessment Act 1979

Environmental Planning and Assessment Regulation 2021

SEPP (Biodiversity and Conservation) 2021

SEPP (Resilience and Hazards) 2021

POLICY CONTROLS

North Sydney DCP 2013
North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF LOCALITY

The site, known as 47 Devonshire Street, Crows Nest is occupied by a pair of single storey semi-detached brick dwellings within a single allotment, being Lot B DP 338733, with a total site area of 385.7m² (12.69m primary frontage and 30.16m side boundary to Devonshire Street, and a 12.75m rear boundary to Huntington Street).

The site is rectangular in shape and located at the corner of Devonshire Street and Huntington Street. The site is located at the “elbow” of Devonshire Street where it intersects Huntington Street. The section of Huntington Street at the rear of the site is a 2-way roadway, widening and becoming one-way eastbound where it meets Devonshire Street.

The area is predominantly residential, comprising detached and semi-detached dwellings and walk-up units; however, the rear access to an auto workshop at No.72 Holtermann Street is diagonally opposite the rear of the site.

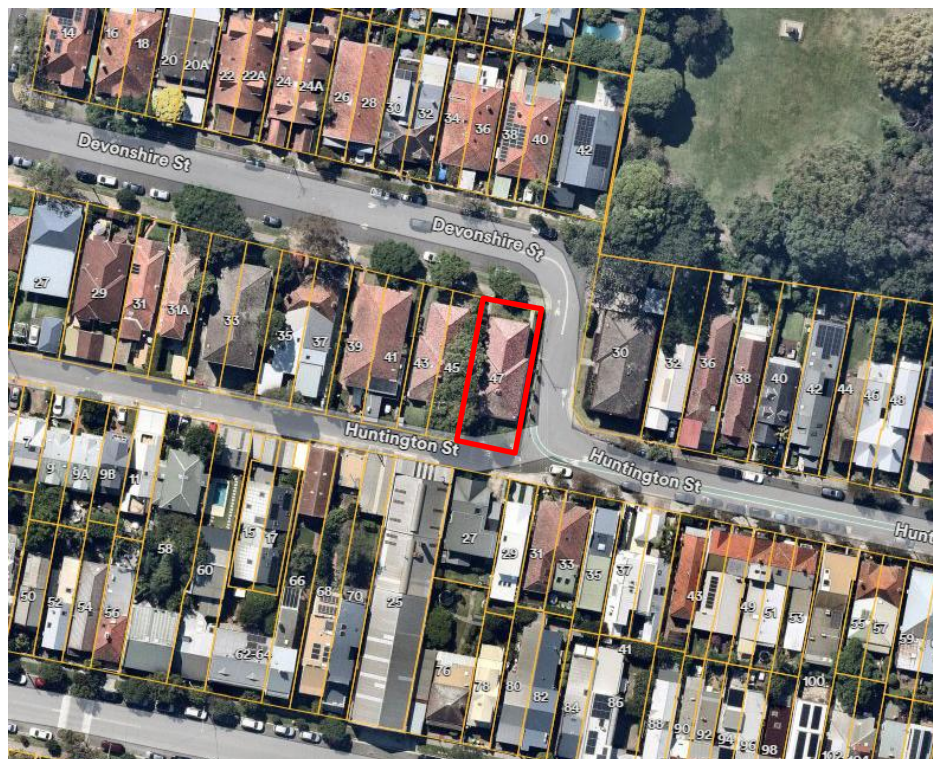


Figure 2: Aerial Map

Previous Applications

DA123/12 was approved by North Sydney Council for the development of a single car parking space and driveway at the rear of 47 Devonshire Street from Huntington Street.

DA402/24 was returned by North Sydney Council due to the submission of insufficient information including no notification plan, clause 4.6 written request, and identification of type of subdivision.

Current application

| Date | Action |
|-------------|---|
| 22 January | Application Lodged |
| 7-21 March | Notification Period |
| 17 March | Additional information was received – fire separation details |
| 1 April | Preliminary review completed |

REFERRALS

BUILDING

The proposal was referred to Council's Building and Compliance Team who provided the following comments:

The building is classified by the NCC BCA as a class 1a building.

Fire separation between the two proposed lots is required to be considered and Council's electronic records do not contain an Occupation Certificate for the existing dwelling however the Proposed Plan of Subdivision accompanying the application shows that a masonry fire separating wall is existing between the two proposed lots.

It is recommended that a certificate prepared by a practicing structural engineer be obtained prior to determination of the development application certifying that the fire separating wall between the two proposed lots complies with Part 9.3, Section 9.3.1 of the ABCB Housing Provisions 2022 of the NCC BCA 2022, Volume 2.

Planner's Comments

The applicant has submitted a Fire Separation Statement as additional information and is therefore acceptable with respect to the comments above. The recommendations of Council's Building and Compliance Team are endorsed and reflected in the determination of the application.

SUBMISSIONS

The subject application was notified to adjoining properties and Holtermann Precinct inviting comment between 7 and 21 March 2025. There were zero submissions received.

CONSIDERATION

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, are assessed under the following headings:

SEPP (Biodiversity and Conservation) 2021

- **Chapter 10 - Sydney Harbour Catchment**

Having regard to the *SEPP (Biodiversity and Conservation) 2021* concerned with the Sydney Harbour Catchment and the Sydney Harbour Foreshores and Waterways Area DCP 2005, the proposed development is not considered to be detrimental to the Harbour and will not unduly impose upon the character of the foreshore given the site's location in Cammeray. As such, the development is acceptable having regard to the provisions contained within the above SEPP.

SEPP (Resilience and Hazards) 2021

- **Chapter 4 – Remediation of Land**

The provisions of SEPP (Resilience and Hazards) require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site.

The subject site has only previously been used for residential purposes and as such is unlikely to contain any contamination; therefore, the requirements of the above SEPP have been satisfactorily addressed.

SEPP (Sustainable Buildings) 2022

As the proposal is below the \$50,000 threshold and does not involve any physical works to the dwelling, the proposal does not trigger the requirement to submit a BASIX Certificate.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN 2013

Compliance diagram

| Principal Development Standards - North Sydney Local Environmental Plan 2013 | | | |
|--|--|-------------------|----------|
| Site Area - m ² | Proposed | Control | Complies |
| Clause 4.1 – Minimum Lot Size | Lot 1: 191.5m ² Lot 2: 194.4m ² | 230m ² | NO |

1. Permissibility

The subject site is Zoned R2 Low Density Residential under the provisions of the *NSLEP 2013*. The proposal involves two lot Torrens Title subdivision and change of use which is a permissible form of development in the Zone R2 with consent from Council.

2. Objectives of the zone

The objectives of the Zone R2 are stated below:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposal will continue to provide for the housing needs of the community within a low density environment. The amended proposal will ensure that a high level of amenity is maintained across the two semi-detached dwellings and provides for the day-to-day needs of residents without compromising the amenity of surrounding properties.

3. Minimum Lot Size

The subject site has a minimum permitted lot size of 230m² pursuant to Clause 4.1(2) of the *NSLEP 2013*. The existing lot has an area of 385.7m² which exceeds minimum lot size standard. As a result of the proposed two lot Torrens Title subdivision, the lot size for proposed Lot 1 is 191.5m², and 194.4m² for Lot 2. The proposal results in a variation to both Lots 1 and 2 of 15% and 16% respectively.

To justify the two-lot subdivision, a written request to vary the development standard made pursuant to Clause 4.6 in *NSLEP 2013* has been submitted and is assessed below.

4. Clause 4.6 - Contravention of a Development Standard

A written request to contravene the development standard for minimum lot size has been submitted and has been considered below:

Clause 4.6(3)(a) Is compliance with the development standard unreasonable and unnecessary in the circumstances of the case?

The most common way to demonstrate that compliance with the development standard is unreasonable and unnecessary is to demonstrate that the objectives of the development standard are met notwithstanding the non-compliance. This is identified as test 1 in *Wehbe*.

Wehbe v. Pittwater Council [2007] NSWLEC 827 ("Wehbe").

(1)(a) to ensure that subdivision and associated development promotes the desired future character of the neighbourhood through consistent lot size, shape, orientation and housing density,

The subject site is located on the southern side of Devonshire Street which is characterised of rectilinear lots of a consistent size with similar frontages. A number of lots within the immediate context of the subject site, which contain semi-detached dwellings, have lot sizes below that of the standard (approximately 195m² on average). The proposed lots have a lot size of 191.5m² and 194.4m², very similar to the identified average lot size of the adjoining properties.

The proposed subdivision would be consistent with this identified subdivision and would reinforce the existing development pattern on the subject site as the existing building form appears as a pair of symmetrical semi-detached dwellings although is considered a dual occupancy as the building is currently located on one lot.

The proposed lots would have a lot size that is marginally smaller than the average lot size for similar development within the immediate context. The orientation and shape of the lots are also consistent with the surrounding lots given that the existing rectilinear subdivision pattern is to be retained. The proposed subdivision would not alter the housing density on the site as the two existing dwellings will be provided.

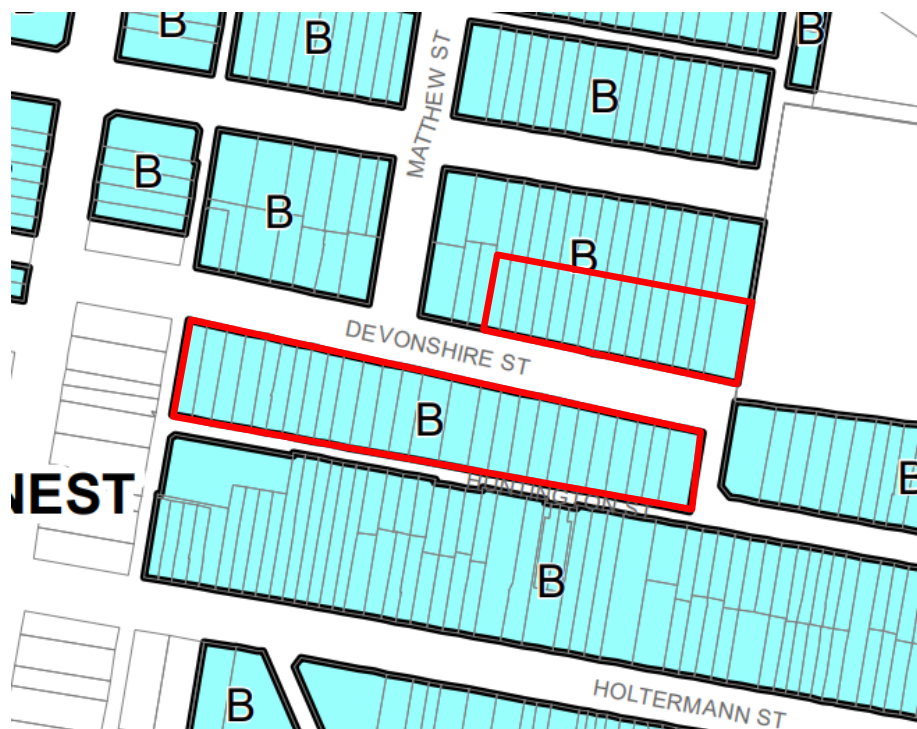


Figure 3: Existing Subdivision Pattern along Devonshire Street (locality of the Site)

(1)(b) to maintain a mix of dwelling sizes and affordable accommodation,

The proposed subdivision would retain the existing number of dwellings on the site whilst allowing separate ownership which would contribute to the provision of housing stock within the locality. The size of the dwellings would be comparable to the surrounding development given that the character is predominantly semi-detached dwellings.

(1)(c) to prevent fragmentation of land, which would prevent the achievement of the extent of development and nature of uses envisioned for particular locations,

The proposed subdivision would reinforce the existing development pattern that is evident on both the subject site and surrounding sites. The existing development on the site is considered to achieve the extent of development envisioned by the Plan for this particular location and would retain its residential use.

(1)(d) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,

The proposed subdivision would reinforce the existing development pattern on the site. Any future development of these dwellings would be the subject of similar building envelope controls that currently apply to the site and also apply to the surrounding development. The proposed subdivision or future development of these dwellings are unlikely to result in any direct amenity impacts that would not be envisaged by the existing site constraints and are a matter for any future application. Notwithstanding, the proposed subdivision does not necessarily imply future development given that the dwellings already exist.

(1)(e) to ensure that lot sizes allow buildings to be sited to protect natural or cultural features, including heritage items, and retain special features, such as trees and views.

The proposed subdivision would not alter the general siting of the development, and any future development could be reasonably accommodated without impacting any special features.

Clause 4.6(3)(b) Are there sufficient environmental planning grounds to justify the variation

The environmental planning grounds advanced in the written request are considered to be sufficient to justify the contravention of the development standard in the circumstances of the case. The following justifications were provided:

- *The proposed subdivision will not impact on the design and amenity of the built environment and will avoid any adverse impacts in relation to: overshadowing, overlooking, loss of views, appearance of building from adjoining properties and the public domain*
- *The 2 lots from the proposed subdivision are consistent with the prevailing subdivision pattern in the area that the existing single lot.*

The environmental planning grounds advanced in the written statement are generally concurred with and provide sufficient justification for the variations to the minimum lot size development standard as the development would reinforce the existing development pattern of the existing development on the site and is consistent with the surrounding development on the southern side of Devonshire Street where the prevailing character is characterised by smaller lots containing semi-detached dwellings.

The alternative to Torrens title subdivision is strata which would introduce complications for the future owners which are not present in the chosen course.

Clause 4.6(4)(a)(i) Applicant's written request

The written request provided by the applicant adequately addresses the matters required by subclause (3) as discussed above.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN (NSDCP) 2013

The above Development Control plan applies to the site, so an assessment has been carried out below:

| DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development | | |
|---|-----------------|---|
| | <i>complies</i> | <i>Comments</i> |
| 1.2 Social Amenity | | |
| Population Mix | YES | The proposed development would retain the two existing dwellings on the site. The proposed subdivision allows for the separate ownership of both dwellings. |
| Maintaining Residential Accommodation | | |
| 1.3 Environmental Criteria | | |
| Solar Access | YES | The proposed development will not change the current solar access of the site or to neighbouring properties. |
| Acoustic and Visual Privacy | YES | The proposed subdivision would reflect the existing development pattern and would not give rise to any acoustic impacts. The proposal does not involve any physical works or changes and therefore visual privacy will be maintained. |

| | | |
|--------------------------------------|-----|---|
| | | |
| Subdivision Pattern | YES | <p>The subdivision of Lot B in DP 338733 into two lots and change of use to the existing dual occupancy (attached) to create a pair of semi-detached dwellings would reinforce the existing development on the site. The existing building contains two dwellings within a symmetrical side by side form which is more consistent with the form of semi-detached dwellings within the locality.</p> <p>The prevailing subdivision character along both sides of Devonshire Street is also primarily semi-detached dwellings with some detached dwellings.</p> |
| Streetscape | YES | <p>The proposed development is consistent with the character of the streetscape. No changes to footpaths, kerb and guttering. No existing street trees are currently located on the road reserve or in the front setback.</p> |
| Siting | YES | <p>The proposed development maintains the characteristic building orientation and siting. The siting of the proposed building is consistent with the arrangement of existing dwellings, neighbouring development and within the locality.</p> <p>The siting of the buildings is east-west orientation with identical side by side built form presentation. The external walls are parallel to the corresponding boundary of the site.</p> |
| Dwelling Entry | YES | No changes proposed to existing arrangements. |
| 1.5 Quality Urban Environment | | |
| Site Coverage | YES | No change to existing. Any future applications involving alterations and additions will provide an assessment against this control. |
| Landscape Area | YES | No change to existing. Any future applications involving alterations and additions will provide an assessment against this control. |
| Servicing of New Lots | YES | <p>The new lots that will be created from the subdivision are adequately serviced under the existing arrangements. No proposed easements, restrictions or covenants are required to be proposed on title.</p> <p>The existing services arrangements will be retained which provide for independent functioning for all utilities including stormwater systems.</p> |

CHARACTER STATEMENTS - PART C

Crows Nest / St Leonards Planning Area (Holtermann Estate A)

The application has been assessed against the relevant controls in NSDCP 2013. The proposal is generally consistent with Part B Sections 2 and 2.4 of NSDCP 2013, which provide for Holtermann Estate A in the Crows Nest / St Leonards Planning Area.

SECTION 7.11 CONTRIBUTIONS PLAN

The proposed development is calculated to cost approximately \$9,350, which is less than the \$100,001 threshold. As a result, the North Sydney Local Infrastructure Contributions Plan is not applicable to this proposal.

HOUSING PRODUCTIVITY CONTRIBUTION

The Ministerial Order for Housing Productivity Contribution came to effect on 1 July 2024. The order applies to land in that includes the Greater Sydney Region in which North Sydney Council is located.

Part 2 Division 1 Clause 5 outlines that Residential Development (including subdivision of land) triggers a contribution if development consent is granted.

(2) States that **Residential Development** means any of the following –

- (a) *subdivision of land (other than strata subdivision) on which development for the purposes of residential accommodation is permitted with development consent by an environmental planning instrument applying to the land (residential subdivision),*
- (b) *medium or high-density residential development,*
- (c) *development for the purposes of a manufactured home estate.*

Schedule 1 defines residential subdivision as: –

Refer to clause 5 (2)(a)

(2) *In this Order, residential development means any of the following-*

- (a) *subdivision of land (other than strata subdivision) on which development for the purposes of residential accommodation is permitted with development consent by an environmental planning instrument applying to the land (residential subdivision),*

Schedule 2 outlines exemptions for this contribution, of which does not include the development as proposed.

| Region | HPC class of development | Amount | HPC unit |
|---|--|----------|-------------------------|
| Greater Sydney | Residential subdivision | \$12,000 | new dwelling lot |
| | Medium or high-density residential development | \$10,000 | new dwelling |
| | Commercial development | \$30 | square metre of new GFA |
| | Industrial development | \$15 | square metre of new GFA |
| Central Coast Illawarra-Shoalhaven Lower Hunter | Residential subdivision | \$8,000 | new dwelling lot |
| | Medium or high-density residential development | \$6,000 | new dwelling |
| | Manufactured home estate | \$6,000 | new dwelling site |
| | Commercial development | \$30 | square metre of new GFA |
| | Industrial development | \$15 | square metre of new GFA |

Division 2 also sets out the following:

12 Calculation of HPC units for residential subdivision

(1) The number of new dwelling lots for residential subdivision is the number of lots authorised by the development consent, less-

- (a) the number of existing potential dwelling lots, and*
- (b) the number of excluded lots.*

Note. Residential subdivision does not include strata subdivision of residential accommodation.

(2) An existing potential dwelling lot is a lot-

- (a) that exists when the development application for the HPC development is made, and*
- (b) on which residential accommodation is permitted with development consent by an environmental planning instrument applying to the land when the development consent is granted.*

(3) A proposed lot is an excluded lot if-

- (a) it is shown on the proposed plan of subdivision as intended to be dedicated for a public purpose such as a public road, public reserve or drainage reserve, or*
- (b) the development consent authorises only the carrying out of development for a purpose other than residential accommodation on the proposed lot, or*
- (c) the development consent authorises medium or high-density residential development on the proposed lot, or*
- (d) there is medium or high-density residential accommodation on the proposed lot when the development application is made and the development consent does not authorise its demolition, or*
- (e) there is an existing building on the proposed lot that-*
 - (i) is used for a purpose other than residential accommodation, and*
 - (ii) is not authorised to be demolished by the development consent, or*
- (f) it is association property within the meaning of the Community Land Development Act 2021, or*
- (g) it is only created for the purpose of rectifying an encroachment on an existing lot.*

In accordance with the Minister's Order dated 1 October 2023 the proposal is subject to a contribution payment of \$12,000.00, calculated in accordance with Clause 7 of the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023*.

Further details on the base contribution calculations are imposed within **Condition J7**.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

| ENVIRONMENTAL APPRAISAL | | CONSIDERED |
|-------------------------|--|------------|
| 1. | Statutory Controls | Yes |
| 2. | Policy Controls | Yes |
| 3. | Design in relation to existing building and natural environment | Yes |
| 4. | Landscaping/Open Space Provision | N/A |
| 5. | Traffic generation and Carparking provision | N/A |
| 6. | Loading and Servicing facilities | N/A |
| 7. | Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.) | Yes |
| 8. | Site Management Issues | N/A |
| 9. | All relevant S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979 | Yes |

PUBLIC INTEREST

The proposal is considered to be in the public interest for the following reasons:

- The development site would be consistent with the established subdivision pattern within the street and wider HCA.
- There are no changes to the overall existing built form.
- There are no adverse impacts on surrounding properties.

Accordingly, the proposal is found to be within the public interest.

SUITABILITY OF THE SITE

The proposal would be located in a R2 Low Density Residential zone, where a Torrens title subdivision of a dual occupancy (attached) from one lot into two and change of use to a pair of semi-detached dwellings is a permissible form of development. The proposal is found to be suitable for the site for the following reasons:

- The size and dimensions of the land accommodate the existing residential accommodation.
- The development maintains compatibility with the established subdivision pattern of surrounding developments.
- It satisfies the need for residential development within an area where demand outweighs supply.

Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

SUBMITTERS CONCERNS

On 6 March 2025, Council notified adjoining properties and the Anderson Precinct of the proposed development seeking comment between 7 – 21 March 2025, and Council received no submissions.

CONCLUSION + REASONS

The matters for consideration as outlined in section 4.15(1) of the Act have been satisfied. Torrens title subdivision of a dual occupancy (attached) from one lot into two and subsequent change of use to a pair of semi-detached dwellings is a permitted form of development in a R2 Low Density Residential zone.

The proposed subdivision results in a non-compliance with the minimum subdivision lot size development standard outlined in Clause 4.1 of the *NSLEP 2013*. The written request made pursuant to Clause 4.6 Exceptions to development standards demonstrates that compliance with the development standard is both unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the variation. Approval of the variation would be in the public interest.

As the proposal does not include any physical works to the dwelling, there would be no significant impact on the existing amenity levels of neighboring dwellings in terms of overshadowing, view loss and acoustic and visual privacy.

On 6 March 2025, Council notified adjoining properties and the Anderson Precinct of the proposed development seeking comment between 7 – 21 March 2025, and Council received no submissions.

Having regard to the merits of the proposal, the application is recommended for approval subject to appropriate standard and site specific conditions for the reasons provided below.

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in *NSLEP 2013* with regards to the non-compliance with Clause 4.1 and grant consent to Development Application No. 420/2024 for the Torrens title subdivision of a dual occupancy (attached) from one lot into two and subsequent change of use to a pair of semi-detached dwellings to on land at 47 Devonshire Street, Crows Nest subject to the following standard conditions:

JACK VARKA
SENIOR ASSESSMENT OFFICER

DAVID HOY
TEAM LEADER ASSESSMENTS

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
47 DEVONSHIRE STREET, CROWS NEST
DEVELOPMENT APPLICATION NO. 420/24

A. *Conditions that Identify Approved Plans*

Development in Accordance with Plans/Documentation

- A1. The development must be carried out in accordance with the following drawings endorsed with Council's approval stamp and other documentation listed in the tables to this condition, or cited by other conditions, and as amended by other conditions of this consent.

Plans

| Plan No. | Issue | Title | Drawn by | Received |
|----------|-------|------------------------------|----------|----------|
| Sheet 1 | - | Proposed Plan of Subdivision | - | - |

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

No Demolition of Extra Fabric

- A2. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

F. *Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation*

National Construction Code

- F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

**47 DEVONSHIRE STREET, CROWS NEST
DEVELOPMENT APPLICATION NO. 420/24**

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Appointment of a Principal Certifier

- F2. Building or excavation works in accordance with the development consent must not be commenced until the Applicant has appointed a Principal Certifier for the building work in accordance with the provisions of *the Environmental Planning and Assessment Act 1979* and its Regulation.

(Reason: Statutory, to ensure appropriate safeguarding measures are in place prior to the commencement of any building or excavation works)

Occupation Certificates

- F3. A person must not commence occupation or use of the whole or any part of a new building (new building includes an altered portion of, or an extension to, an existing building) unless the relevant Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifier appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory compliance)

G. Prior to the Issue of an Occupation Certificate**Sydney Water**

- G1. A section 73 Compliance Certificate under *the Sydney Water Act 1994* must be obtained.

The final section 73 Certificate must be submitted to the Principal Certifier prior to release of any linen plan for subdivision or prior to occupation of the development, whichever is the earlier.

The section 73 Certificate must be submitted to the Principal Certifier prior to the issue of the Strata Certificate.

Note: Application must be made through an authorised Water Servicing Co-ordinator, for details see the Sydney Water web site www.sydneywater.com.au/customer/urban/index, or telephone 13 20 92.

Following application, a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

(Reason: To ensure compliance with the statutory requirements of Sydney Water)

**47 DEVONSHIRE STREET, CROWS NEST
DEVELOPMENT APPLICATION NO. 420/24**

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J. Prior To the Issue of Any Subdivision Certificate (Land/Torrens/ Stratum)**Registered Plans (Land/Torrens/Stratum)**

- J1. The Applicant must submit to Council's documentary evidence that the subdivision has been registered, and the lot(s) exists. The use of the premise must not commence until the documentary evidence has been submitted to and approved by Council.

(Reason: To ensure that the allotments of land are created prior to the commencement of the approved use.)

Subdivision Certificate

- J2. A subdivision certificate that authorises the registration of a plan of subdivision at the NSW Land Registry Services must be obtained. The following must be submitted to Council with any application for a Subdivision Certificate:

- a) The original plans of subdivision and administration sheets, and any original 88B instrument to be endorsed;
- b) A completed *Application for Subdivision Certificate* form duly completed with payment of fee current at lodgement;
- c) Written evidence that all applicable conditions of consent to be satisfied, prior to issue of the Subdivision Certificate, have been satisfied (including submission of all required certificates and the like); and
- d) All other information required by *the Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2021*.

Note:

- 1) Council will check the consent conditions on the relevant subdivision consent. Failure to submit the required information will delay endorsement of the plan of subdivision and may require payment of rechecking fees.
- 2) Council will not accept bonds in lieu of completing subdivision works.

(Reason: To ensure compliance with relevant legislative requirements and maintenance of up-to-date Council records)

Fire Safety Upgrade

- J3. Prior to issue of any Strata Certificate, works involving the upgrading/installation of essential fire safety measures (as recommended in the NCC Assessment and Fire Safety Upgrading Report prepared by AED Group, dated 6 March 2025 are to be fully completed.

**47 DEVONSHIRE STREET, CROWS NEST
DEVELOPMENT APPLICATION NO. 420/24**

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A **fire safety schedule** and **final fire safety certificate** (as specified in sections 78, 79 and 86 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* must be issued with the relevant Construction Certificate and the relevant Occupation Certificate, respectively.

A report from an appropriately qualified person in relation to fire safety and the National Construction Code, certifying that the fire upgrading works have been completed and indicating all required essential fire safety measures have been installed and verified as functioning in accordance with the abovenamed report, must be submitted to the Principal Certifier for approval prior to the issue of any Strata certificate.

Note: The requirement to undertake physical building works in relation to the installation/ upgrade of essential fire safety measures in the building constitutes building work and as such will necessitate obtaining the relevant Construction Certificate, appointing a Principal Certifier and obtaining an Occupation Certificate (pursuant to relevant provisions of the *Environmental Planning and Assessment Act 1979 Act*.

(Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety)

Sydney Water Compliance Certificate

- J4. A section 73 Certificate under the *Sydney Water Act 1994* must be obtained prior to the release of a subdivision certificate.

The section 73 Certificate must be submitted to the Principal Certifier or North Sydney Council with the documentation to enable the issue of the Strata Certificate.

Note: Application must be made through an authorised Water Servicing Coordinator, for details see the Sydney Water web site www.sydneywater.com.au/customer/urban/index, or telephone 13 20 92.

Following application, a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

(Reason: To ensure compliance with Sydney Water requirements)

Services within Lots

- J5. A report must be provided by a Registered Surveyor certifying that all services (including but not limited to stormwater drainage, gas, electricity, telephone cable) as constructed or to be constructed are/will be contained within each lot or within the necessary easements to accommodate such services. The report must be submitted to the Principal Certifier for approval prior to the issue of any Subdivision Certificate.

(Reason: To ensure adequate servicing of the development)

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Building and Unit Numbering

- J6. Prior to issue any Subdivision Certificate, the person acting upon this consent must apply to North Sydney Council and receive written confirmation of the allocated street address (house number) and unit numbers for the building. These are the property addresses that will be recorded in Council records and must be displayed at the property in accordance with the provisions of the applicable Australian Standard (AS/NZS 4819:2011).

A draft proposal for numbering of units or allotments must be submitted to Council for endorsement, as these numbers will be used to maintain Council's property and mapping database.

(Reason: To ensure that Council records are accurate, and that building and unit numbering complies with the requirements of Council's Property Addressing Policy. Proper building and unit numbering also assists emergency services in readily locating properties)

Housing and Productivity Contribution

- J7. The housing and productivity contribution (HPC) set out in the table below, but as adjusted in accordance as shown under item (i) of this condition, is required to be made:

| Housing and productivity contribution | Amount |
|--|--------------------|
| Housing and productivity contribution (base component) | \$12,000.00 |
| Transport project component | \$0 |
| Total housing and productivity contribution | \$12,000.00 |

The amount payable at the time of payment is the amount shown as the total housing and productivity contribution for each stage specified in the tables to condition 2, adjusted by multiplying it by:

highest PPI number
consent PPI number

where:

highest PPI number is the highest PPI number for a quarter following the June quarter 2023 and up to and including the 2nd last quarter before the quarter in which the payment is made, and

consent PPI number is the PPI number last used to adjust HPC rates when consent was granted, and

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June quarter 2023 and PPI have the meanings given in clause 22 (4) of the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023*.

If the amount adjusted in accordance with this condition is less than the amount at the time consent is granted, the higher amount must be paid instead.

The HPC must be paid before the issue of any Construction Certificate.

The HPC must be paid using the NSW planning portal (<https://pp.planningportal.nsw.gov.au/>).

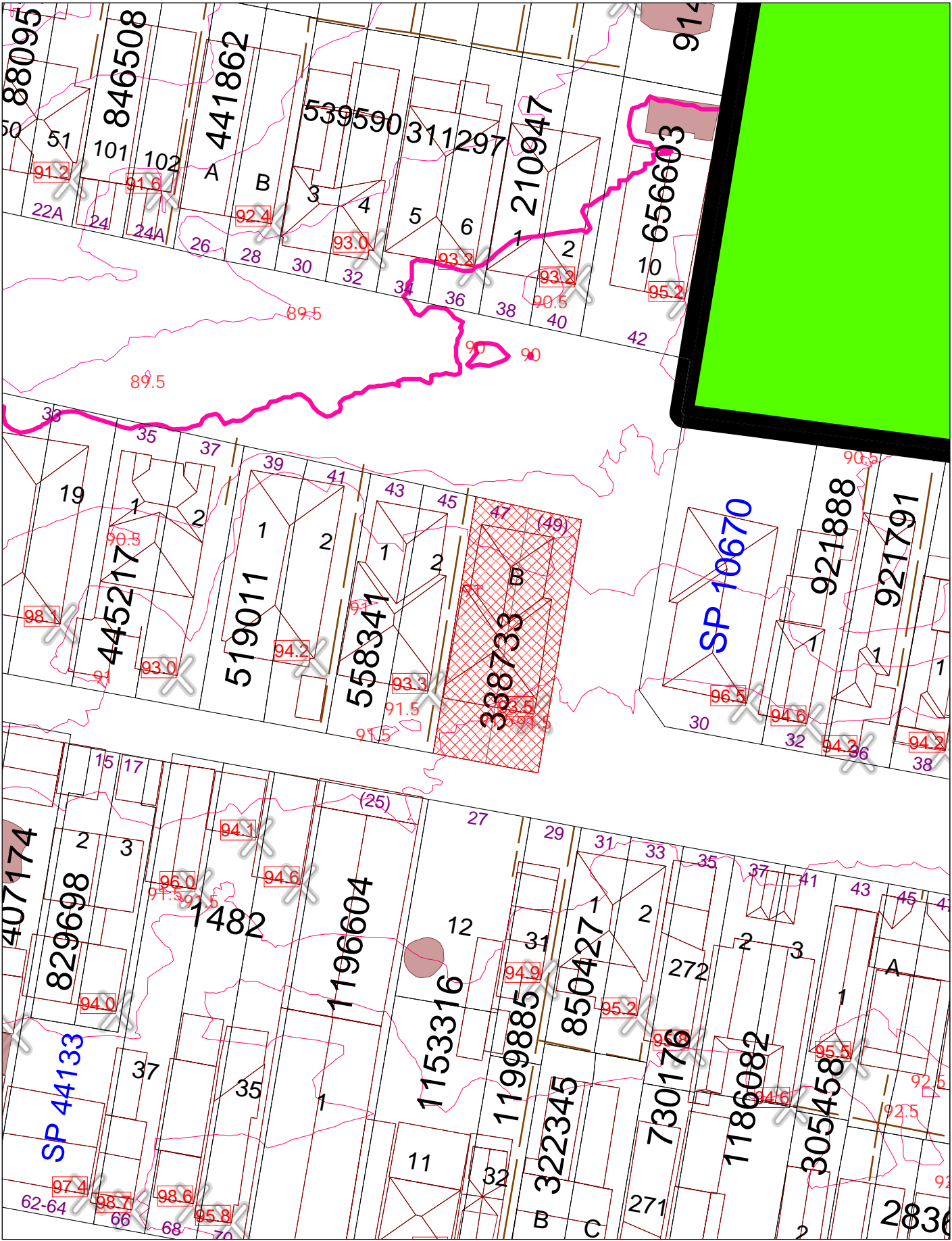
If the Minister administering the *Environmental Planning and Assessment Act 1979* agrees, the HPC may be made, instead of as a monetary contribution, in the following ways:

- a) the dedication or provision of land for the purpose of regional infrastructure in the region in which the development will be carried out,
- b) the carrying out of works for the purpose of regional infrastructure in the region in which the HPC development will be carried out.

If the HPC is made partly as a monetary contribution, the amount of the part payable is the amount of the part adjusted in accordance with item (i) in this condition at the time of payment. Each part of an instalment that is to be made as a monetary contribution is also to be adjusted in accordance with item (i) in this condition at the time of its payment.

Despite the requirement of this condition, a housing and productivity contribution is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the *Environmental Planning and Assessment Act 1979* to the development, or the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023* exempts the development from the contribution. The amount of the contribution may also be reduced under the order, including if payment is made before 1 July 2025.

(Reason: To provide contribution as required by the *Environmental Planning and Assessment (Housing Productivity Contribution) Order 2023*)



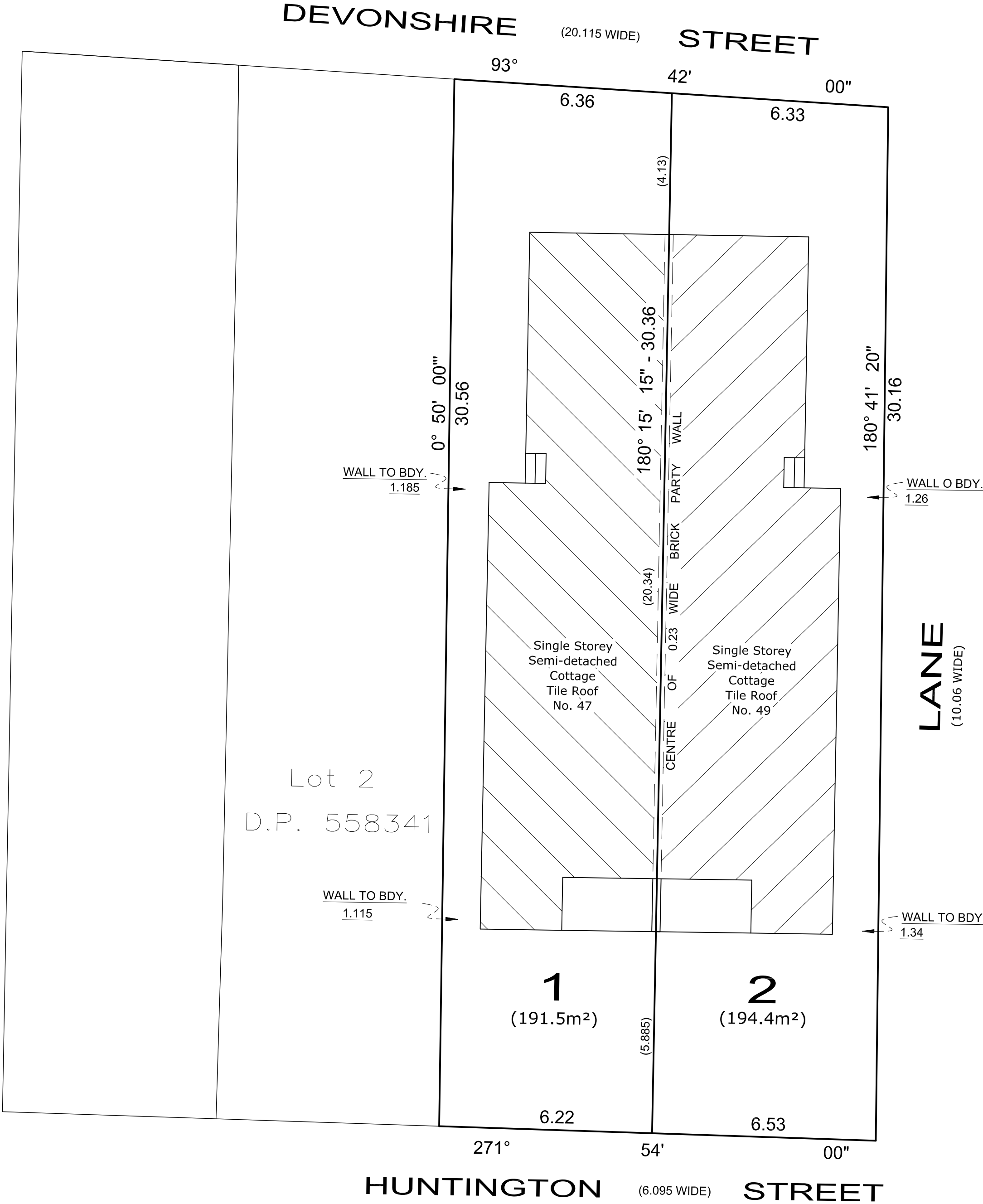
North Sydney Council

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Further details can be obtained by calling (02) 9936 8100 or e-mail mapping@northsydney.nsw.gov.au.

Scale: 1:600 approx.





| | | | | |
|--|--|---|------------|---------------------------------|
| SURVEYOR Name: Date: Reference: | PLAN OF SUBDIVISION OF LOT B IN DP338733 | LGA: NORTH SYDNEY Locality: CROWS NEST Reduction Ratio: 1:100 Lengths are in metres. | Registered | PROPOSED PLAN OF SUBDIVISION |
|--|--|---|------------|---------------------------------|



CLAUSE 4.6 REQUEST FOR EXCEPTION TO A DEVELOPMENT STANDARD

Subdivision at 47-49 Devonshire Street, Crows Nest

INTRODUCTION

This clause 4.6 written request is made on behalf of the applicant for subdivision at 47-49 Devonshire Street, Crows Nest (the Site).

This request is made having regard to:

1. Plans of Subdivision prepared by John R. Holt Surveyors dated 29 October 2024 (the Plans).
2. Clause 4.6 of North Sydney Local Environmental Plan (NSLEP) 2013.
3. NSW Government's Guide to Varying Development Standards - November 2023 (the Guide).
4. Relevant decisions in the New South Wales Land and Environment Court (the Court).
5. The Guide clarifies requirements for preparing, assessing, and determining requests to vary development standards.

The following addresses the structure and matters to be addressed as detailed in the Guide.

1. BACKGROUND

1.1 Site

The site is located at 47-49 Devonshire Street, Crows Nest and within the Holtermann Estate A Heritage Conservation Area. This area is described in Council's Development Control Plan (DCP) as an "...area characterised by its low scale of single storey, hipped roof, detached and attached dwelling houses that includes a mix of late 19th and early 20th century building styles, and restrained examples of Victorian Georgian, Filigree and Italianate, Federation Queen Anne and Federation Bungalow".

Significant elements of the estate described in the DCP include the following:-

Subdivision

P2 Detached houses: 380m² lots with 10m frontage.

P3 Semi-detached and attached houses and some detached houses: 180m² to 260m² lots with 4-6m frontages. Long narrow lots with frontages to street and laneway (where they occur).

The site has an area of 385.9m² and is occupied by dual occupancy (attached) dwellings. The main period of construction in the area was from 1884 to 1915.

The site is well located in relation to:

- public transport
- shops and services
- Childcare
- Hospital

1.2 Zone

The site is zoned R2 Low Density Residential, and subdivision is permitted with consent.

1.3 Proposed Development

As detailed in the Subdivision Plans the development seeks approval for subdivision of the site with existing dual occupancy (attached) dwellings into two (2) lots as detailed in Subdivision Plan that accompanies this application.

Key elements of the 2-lot subdivision plan are provided in the following table:

| Existing House No. | Proposed Lot No. | Site Area (m ²) | Street Frontage (m) |
|--------------------|------------------|-----------------------------|---------------------|
| 47 | 1 | 191.5 | 6.22 |
| 49 | 2 | 194.4 | 6.53 |

This application does not seek approval for any works associated with the existing housing or infrastructure.

2. PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

2.1 Planning Instrument

This submission seeks to vary the minimum subdivision lot size standard in clause 4.1 of North Sydney Local Environmental Plan (NSLEP) 2013 that requires the subdivision lot size on the subject land to not be less than 230m² shown for the land on the Lot Size Map.

2.2 Development Standard

This minimum subdivision lot size is a 'development standard' as defined under Section 1.4(1) of the Environmental Planning & Assessment Act 1979 because it is a provision of an environmental planning instrument (ie NSLEP 2013) that is fixed in respect of an aspect of that development that relates to the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of the building.

The objectives for minimum subdivision lot size development standard are:

- a) to ensure that subdivision and associated development promotes the desired future character of the neighbourhood through consistent lot size, shape, orientation and housing density,
- b) to maintain a mix of dwelling sizes and affordable accommodation,
- c) to prevent fragmentation of land, which would prevent the achievement of the extent of development and nature of uses envisioned for particular locations,
- d) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,
- e) to ensure that lot sizes allow buildings to be sited to protect natural or cultural features, including heritage items, and retain special features, such as trees and views.

2.3 Proposed Variation

The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum 230m² size shown on the Lot Size Map in relation to site.

The size of the 2 lots resulting from the proposed subdivision are 191.5m² and 194.4m². These lots are 16.74% and 15.48% less than the minimum lot size respectively.

3. JUSTIFICATION FOR EXCEPTION TO THE MINIMUM SUBDIVISION LOT SIZE STANDARD

Clause 4.6(2) of NSLEP 2013 allows Council to grant development consent to a development that contravenes a development standard.

Clause 4.6(3) imposes two (2) preconditions on Council in exercising the power to vary a development standard and grant consent to the proposed development. Council must be satisfied the application for an exception to a development standard has demonstrated the following:

- 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.

Having due regard to the provisions for preparing a written request to vary a development standard detailed in the Guide, the following provides an assessment and justification of the proposed variation against the relevant tests in clause 4.6 of NSLEP 2013. The justification provided is specific to the aspect of the development (ie minimum subdivision lot size) that is the subject of the proposed contravention.

3.1 Compliance with the development standard is unreasonable or unnecessary in the circumstances

The Guide identifies “the common ways to establish whether compliance with the development standard is unreasonable or unnecessary is known as the ‘5-part test’ or the ‘Wehbe test’ (from the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827)”. The Wehbe test lists 5 common ways clause 4.6(3)(a) can be addressed and the Guide confirms “...an applicant only needs to satisfy at least one part of the Wehbe test, not all 5 parts.”

Having due regard to the Wehbe test, strict compliance with the minimum lot size standard is considered both unreasonable and unnecessary in the circumstances of this case because:-

1. the objectives of the standard are achieved notwithstanding non-compliance with the standard (Wehbe 1st test); and
2. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Wehbe 3rd test).

The following provides an assessment of the above matters (emphasised in bold and italics).

The objectives of the standard are achieved notwithstanding non-compliance with the standard (Wehbe 1st test)

The objectives of the minimum lot size standard are identified below, and comment is provided on the how the objectives of the standard are achieved, where relevant.

Objective #1

to ensure that subdivision and associated development promotes the desired future character of the neighbourhood through consistent lot size, shape, orientation and housing density

Comment

The proposed subdivision will complement the existing subdivision pattern in the conservation area that is characterised by significant elements described in Part C – Section 3 of Council's DCP as follows:-

“Semi-detached and attached houses and some detached houses: 180m² to 260m² lots with 4-6m frontages. Long narrow lots with frontages to street and laneway (where they occur).”

The lot size, shape, orientation and housing density ‘formalised’ by the proposed subdivision is in keeping with the existing subdivision pattern in the Holtermann Estate A Heritage Conservation Area. The following figure provides a view of the subdivision pattern in the local context of the subject site (outlined in red) showing how the majority of lots in the locality are long and narrow. The existing lot has an area of 385.9m² that is more characteristic of lots accommodating single dwellings and not lots accommodating dual occupancy dwellings.



Source: NSW Planning Portal

Objective #2

to maintain a mix of dwelling sizes and affordable accommodation

Comment

The proposed subdivision will maintain the existing dwellings on the site and will not impact on the mix of dwellings or affordability in the area.

Objective #3

to prevent fragmentation of land, which would prevent the achievement of the extent of development and nature of uses envisioned for particular locations

Comment

The proposed subdivision will provide for a change in use from 'dual occupancy (attached)' to 'semi-detached dwellings' that are a use envisioned for this particular location. Part C – Section 3 of Council's DCP describes the characteristics of buildings in the Holtermann Estate Conservation Area as follows:-

"Single storey, detached, semi-detached and attached dwelling houses."

The proposed subdivision will further consolidate the existing use of the site for 'semi-detached dwellings' and will not result in land fragmentation.

Objective #4

to minimise any likely impact of subdivision and development on the amenity of neighbouring properties

Comment

The subdivision will not impact on the amenity of the neighbouring properties because there are no works proposed to the form or fabric of the existing dual occupancies and the natural surrounds. The subdivision will 'formalise' the existing 'dual occupancy' development where dwellings are on one lot of land so that they become 'semi-detached' dwellings where each dwelling is on its own lot of land.

Objective #5

to ensure that lot sizes allow buildings to be sited to protect natural or cultural features, including heritage items, and retain special features, such as trees and views

Comment

The lot sizes will accommodate the existing dual occupancies (attached) dwellings and protect the natural and cultural features of the site. There will be no detrimental impact on the maintenance of trees, vegetation, landscaping and views.

The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Wehbe 3rd test)

The subdivision proposal provides for the orderly and economic use and development of the land in the form of a 'semi-detached' housing that makes a positive contribution to the existing character of the Holtermann Estate Conservation Area as it relates to subdivision pattern.

Part C – Section 3 of Council’s DCP describes the characteristics of buildings in the Holtermann Estate Conservation Area as being single-storey, detached, semi-detached and attached dwelling houses.

Dual occupancy dwellings, where both houses are located on the one lot of land, is an uncharacteristic element of the area whereas semi-detached dwellings where the houses are located on their own lot of land are specifically identified as being a characteristic of the area.

Strict compliance with the required minimum subdivision lot size standard will result in the site remaining as an uncharacteristic element of the area.

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

The Guide provides detailed direction on what environmental planning grounds need to be adequately addressed to support the justification as to why contravening the development standard is acceptable. The Guide notes environmental planning grounds are matters that relate to the subject matter, scope and purpose of the Environmental Planning & Assessment Act 1979 including the Act’s objects.

Avoiding adverse impacts may constitute sufficient environmental planning grounds as it promotes ‘good design and amenity of the built environment’ – one of the objects of the EP&A Act. The proposed subdivision will not impact on the design and amenity of the built environment and will avoid any adverse impacts in relation to:-

- Overshadowing
- Overlooking
- Loss of views
- Appearance of building from adjoining properties and the public domain

Examples of environmental planning grounds identified in the Guide, and which apply to the subject application, include:

“being consistent with the prevailing subdivision pattern”

The prevailing subdivision pattern in the area as described in Part C – Section 3 of Council’s DCP is characterised by semi-detached houses on 180m² to 260m² lots with 4-6m frontages ie long narrow lots with frontages to street and laneway (where they occur).

The existing lot at 47-49 Devonshire Street is 385.9m² in area with 12.75m frontage and generally uncharacteristic of prevailing lots in the area. The proposed subdivision will create 2 lots of 191.5m² and 194.4m² in area with 6.22m and 6.53m frontages respectively. The 2 lots from the proposed subdivision are significantly more consistent with the prevailing subdivision pattern in the area than the existing single lot.

In summary, there are sufficient environmental planning grounds to justify contravening the minimum subdivision lot size standard and the justification is specific to the aspect of the development that is the subject of the proposed contravention.

4. CONCLUSION

Clause 4.6 of North Sydney Local Environmental Plan 2013 aims to provide an appropriate degree of flexibility in applying certain development standards to development and to achieve

better outcomes by allowing flexibility in particular circumstances. The proposed development warrants favourable consideration under this clause because it has been demonstrated:

- compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- there are sufficient environmental planning grounds to justify contravening the development standard, and

Further, the development:

- a) is not contrary to the objects of the EP&A Act 1979;
- b) is not contrary to the aims of the LEP;
- c) is permitted with consent in and is consistent with the objectives of the zone; and
- d) achieves a better outcome in relation to subdivision pattern.

In summary, the development is in keeping with the existing character of the Holtermann Estate Conservation Area and sufficient environmental planning grounds have been established to justify the minimum subdivision lot size contravention.



Anthony Polvere (BA Planning)
Director
PPD Planning Consultant

17 December 2024