



City of Parramatta	
File No:	

SECTION 4.15 ASSESSMENT REPORT
Environmental Planning & Assessment Act 1979

DA No:	DA/318/2023
Subject Property:	Lot 200 DP 1104602, 54-56 Albert Street, NORTH PARRAMATTA NSW 2151
Proposal:	Strata Subdivision of Existing Residential Flat Building Complex.
Date of receipt:	6 June 2023
Applicant:	Richard Hogan & Co
Owner:	GS & MS Investments Pty Ltd and SPG Management Pty Ltd
Property owned by a Council employee or Councillor:	The site is not known to be owned by a Council employee or Councillor
Political donations/gifts disclosed:	None disclosed on the application form
Submissions received:	Nil
Recommendation:	Approved
Assessment Officer:	Cade Tracey

1. Legislative Requirements

Relevant provisions considered under section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979	<ul style="list-style-type: none">• State Environmental Planning Policy (Housing) 2021• State Environmental Planning Policy (Biodiversity and Conservation) 2021• State Environmental Planning Policy (Resilience and Hazards) 2021• State Environmental Planning Policy (Transport and Infrastructure) 2021• Parramatta Local Environmental Plan 2023 (PLEP 2023)• Parramatta Development Control Plan 2011 (PDCP 2011)• Parramatta Local Environmental Plan 2023 (2023)
Zoning	R2 – Low Density Residential / R4- High Density Residential
Bushfire Prone Land	No
Heritage	Yes
Heritage Conservation Area	Yes (Sorrel Street Conservation Area)
Designated Development	No
Integrated Development	No
Clause 4.6 variation	Yes
Delegation	Parramatta Local Planning Panel (PLPP) due to cl.4.6 to vary strata lot size

2. Executive Summary

The subject site is known as 54-56 Albert Street, North Parramatta. The site maintains two street frontages, each facing Albert and Isabel Streets. The site and surrounding properties are zoned a mix of R2 Low Density Residential and R4 High Density Residential. Several heritage items are located throughout the immediate locality while the

Sorrell Heritage Conservation Area covers the site and areas towards the east which locates the Sorrell Street corridor.

The site currently contains:

- A heritage cottage of local significance known as Whiteoak,
- Part one and two storey townhouses located beside the heritage cottage,
- A two-storey residential flat building over basement carparking located behind the townhouses,
- A part one and two storey residential flat building located over basement carparking, towards the centre of the site and towards the Isabella Street frontage.

The proposed development is limited to the Strata Subdivision of the existing residential development and heritage item on site. Specifically, the application seeks approval for the subdivision of 23 strata units including:

- Unit 1 forming the existing heritage cottage.
- Units 2-3 forming the existing townhouses.
- Units 4-23 forming the two existing residential flat buildings.

All associated carparking arrangements including 27 basement car spaces, and common property such as the onsite detention tank, planter boxes and stairs are also to be included.

Section 4.15 Assessment Summary

The application has been assessed relative to section 4.15 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls.

As stated above, the application relates to a residential flat building, approved prior to the commencement of the PLEP 2023. A review of Councils records has determined the site has employed and maintained the provisions of existing use rights as the development is located on R2 Low Density Residential zoned land which lists residential flat buildings as prohibited development. Furthermore, as the site is affected by R2 Low Density Residential zoned land, clause 4.1A of the PLEP 2023 applies to the proposal. It is noted however that only the specific portions of the site zoned R2 Low Density Residential are subject to this clause, land zoned R4 High Density Residential and the proposed strata units located entirely within this land remain unaffected.

Clause 4.1A of the Parramatta Local Environmental Plan 2023 (PLEP 2023) requires any Strata Subdivision on land zoned R2 to result in lots not less than 550m² (the minimum lot size for the site).

In this instance the proposal will result in subdivision of lots measuring down to 87m² which represents a variation of 84.2% (or 463m²) to the PLEP 2023 control.

The proposal has been accompanied by a Clause 4.6 variation request prepared by the applicant which demonstrates that compliance with the clause is unreasonable and unnecessary within the circumstances of the case. The variation has been reviewed by Council who supports the variation.

Having regard to the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, it is recommended Development Application No. DA/318/2023 be approved. The recommended conditions of consent are within **Attachment 1**.

3. Site Description and Conditions

The subject site is legally defined as Lot 200 DP 1104602 and is also known as 54-56 Albert Street, North Parramatta. The site maintains two street frontages, one facing Albert Street while the other fronts Isabella Street to the north. The site and surrounding properties are zoned a mix of R2 Low Density Residential and R4 High Density Residential. Several heritage items are located throughout the immediate locality while the Sorrell Heritage Conservation Area covers the site and areas towards the east which locates the Sorrell Street corridor. Pedestrian access onto the site can be gained from either Albert or Isabella Streets, vehicle access to the basement carpark is also available from both Streets.

The site currently contains a heritage cottage of local significance known as Whiteoak (item I298) and faces Albert Street, part one and two storey townhouses which also face Albert Street beside the cottage, a two-storey residential flat building over basement carparking (for 27 car spaces) located behind the townhouses and a second two storey residential flat building located over the basement carpark towards the centre of the site as well as towards the Isabella Street frontage.

The site is located within an established residential area characterised predominantly by older low-rise brick residential flat buildings, some residential dwellings predominantly of heritage significance also form part of the streetscape character. Immediately adjoining the subject site to the east is a dwelling house known as The Jones which is a heritage item of local significance (item I299), a residential flat building is also located to the east while residential flat buildings adjoin the site to the west.

To clarify the location of the application site and specifically that of the subject site, refer to the aerial images and photographs in **Figures 1 - 7** below.

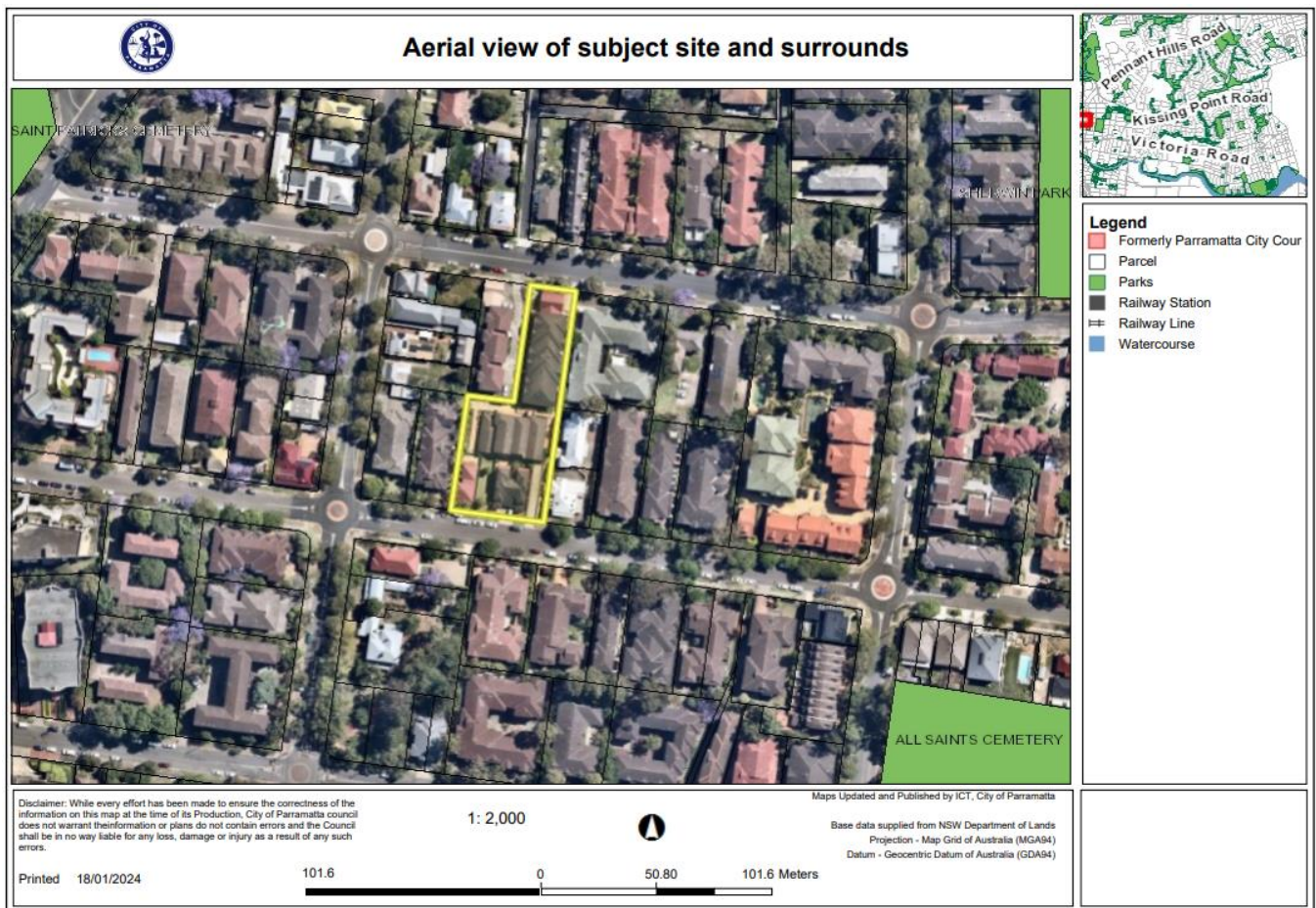


Figure 1: Aerial view of the subject site and surrounds. Subject site outlined in yellow (Nearmap, 2023).

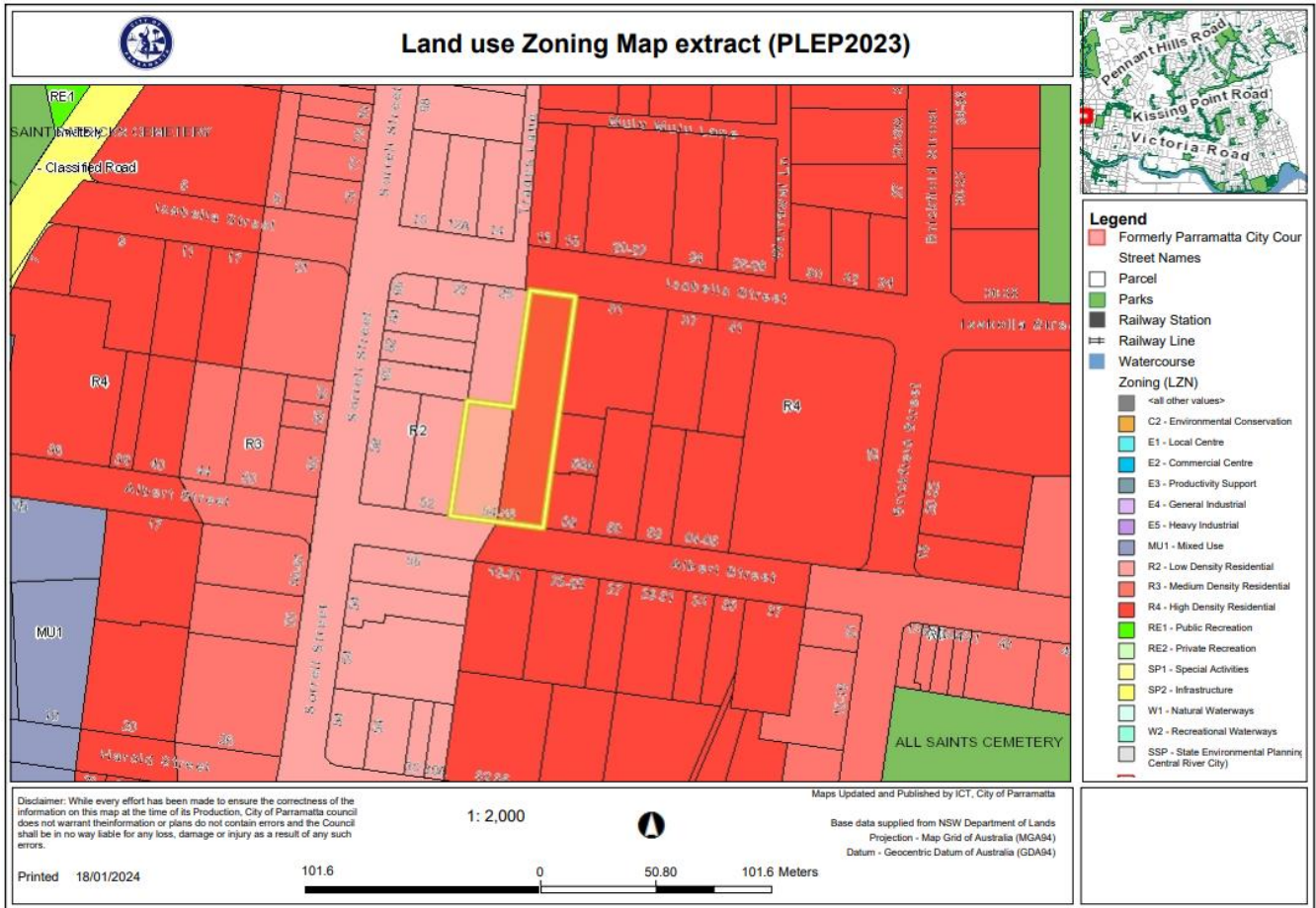


Figure 2: R2 Low Density Residential Zoning Map extract (PLEP 2023).

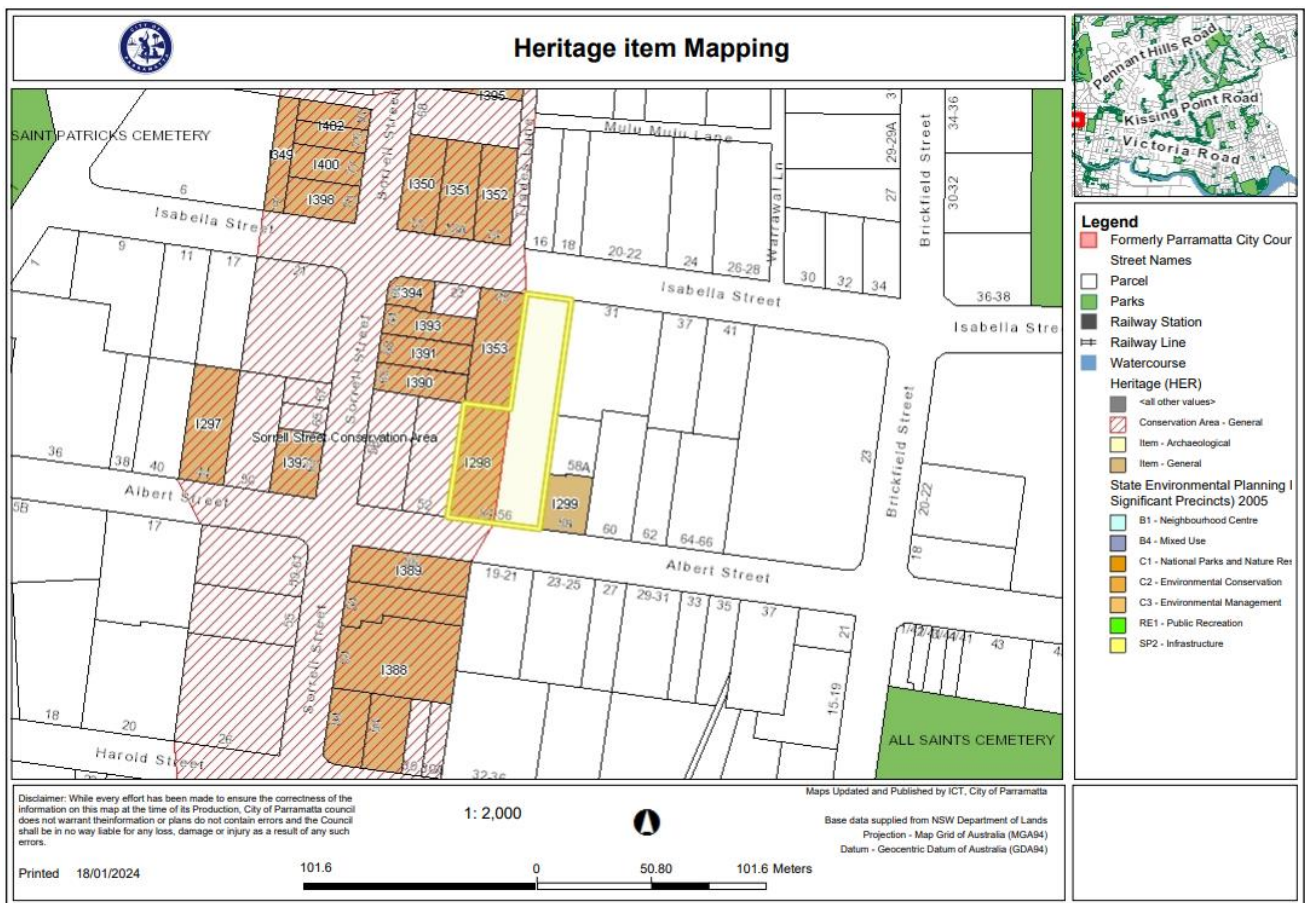


Figure 3: Heritage identification map extract (PLEP 2023).

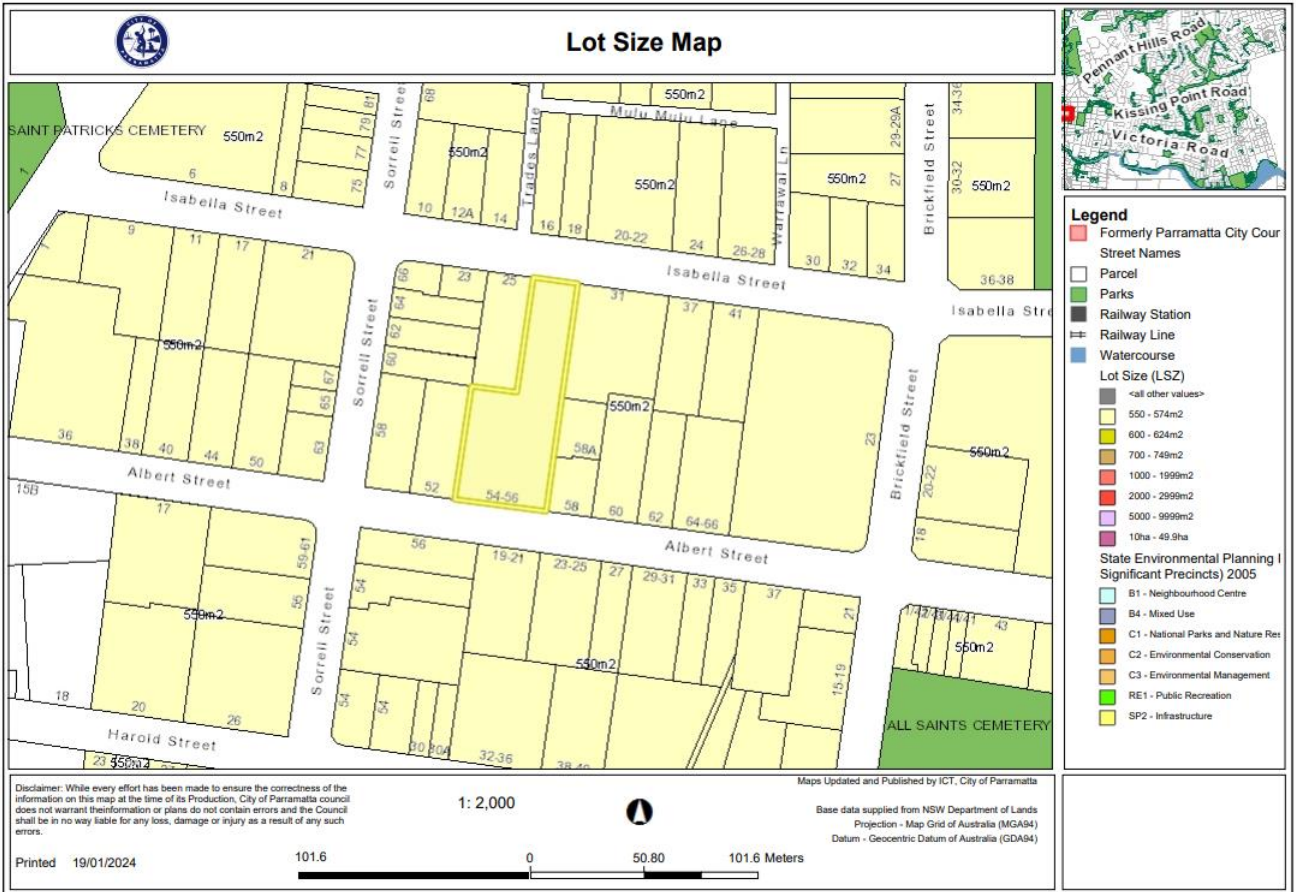


Figure 4: Lot size map (PLEP 2023).



Figure 5: View of site looking northeast from Albert Street, Whiteoak heritage item viewed to the left (Site inspection, 29/01/2024).



Figure 6: View of site looking directly north from Albert Street (Site inspection, 29/01/2024).



Figure 7: View of site as seen from Isabella Street (Site inspection, 29/01/2024).

4. Relevant Site History

Table 1 below provides details of existing approvals relating to the site.

Development Application	Description
DA/1230/2000	Alterations and Additions to a heritage item, demolition of other buildings and structures, construction of 1 x 2-bedroom villa, 2 x 3-bedroom townhouse and 2 Residential Flat buildings containing 12 x 2-bedroom units. – Approved: 5 November 2001
CC/292/2006	Construction Certificate for Alterations and Additions to a heritage item, construction of 2 villa's, 2 townhouses and 2 residential flat buildings over basement carpark. – Approved 6 June 2006

Since issue of the Occupation Certificate on 6 October 2009, Council records do not contain any further applications or records concerning the site.

5. Application History

Date	Event
19/07/2023	Council requested additional information including: <ul style="list-style-type: none">• Statement of Heritage Impact,• Existing Conservation Management Plans,• Amended strata plans that fit the curtilage of the heritage item and associated areas in its entirety.
14/08/2023	Applicant confirmed the following: <ul style="list-style-type: none">• No Existing Conservation Management Plan exists,• Statement of Heritage Impact to be prepared,• Offer for proposed Strata Subdivision to include strata by-laws for the management of the heritage item, in place of an amended strata plan to fit curtilage of the heritage item.
19/09/2023	Council provided the following advice: <ul style="list-style-type: none">• A new Conservation Management Plan is to be prepared as no current plan exists,• Confirmation that inclusion of strata by-laws for management of the heritage item in place of an amended strata plan will be accepted by Council. Note: After subsequent review by Council's Senior Heritage Specialist, conditioning has instead been included requiring submission and approval by Council concerning further information such as conservation work schedule and cyclical maintenance plan, prior to issue of a Strata Subdivision Certificate, in the place of previously mentioned bylaws.
27/11/2023	Applicant submitted the requested information.
09/01/2023	Council contacts applicant regarding clause 4.1A of the PLEP 2023 and confirms a clause 4.6 variation request document is required.
15/01/2023	Applicant submitted clause 4.6 variation request document.

6. The Proposal

Development Application 318/2023 was lodged on 6 June 2023 for the Strata Subdivision of an existing residential flat building complex. Specifically, the application seeks approval for Strata Subdivision of all existing units and dwellings on site, including the heritage cottage known as Whiteoak. All associated carparking arrangements and common property are to be included. A total of 23 strata units are to be created. All units will also maintain either one or two dedicated car spaces.

The proposed units that will be located or partially located on land zoned R2 Low Density Residential are as follows:

- proposed lot 1 which contains the heritage item (137m²),
- proposed lot 2 which contains a townhouse unit (103m²),
- proposed lots 4, 5 and 17 which contain units forming portions of the residential flat building which encroaches within the R2 zoned land (95m², 87m² and 100m² respectively).

No physical works form part of this application.

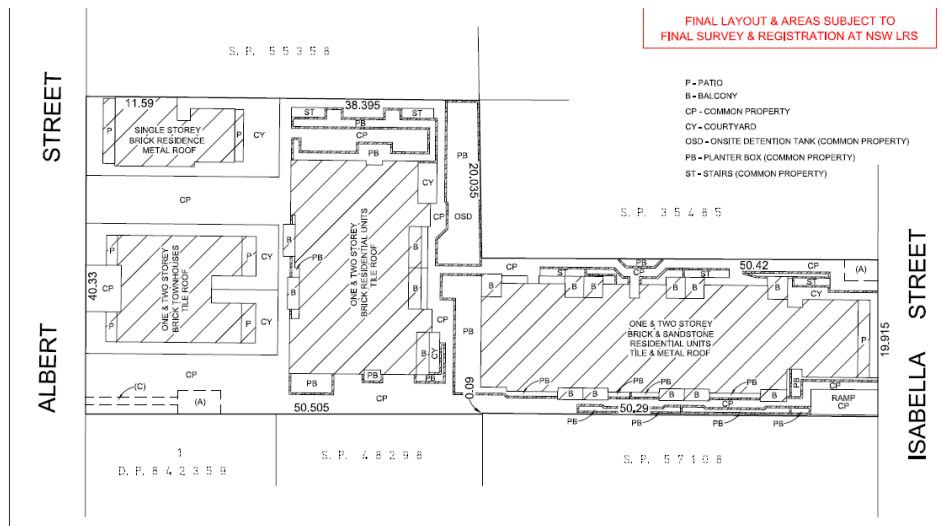


Figure 8: Location plan for plan of Strata Subdivision (extracted from submitted plans).

7. Referrals

The following section outlines the response and conditions recommended from each of the internal and external referrals in relation to the subject application.

Referral	Comment
Senior Heritage Specialist	<p>Supported, subject to conditions.</p> <p><i>“The owner has provided council with a Heritage Asset Action Plan, an updated Statement of Significance and the schedule of maintenance.</i></p> <p><i>The proposed strata subdivision will have a minimal and acceptable impact on the heritage item, the heritage items in the vicinity, or the Sorrell Street Conservation Area for the following reasons:</i></p> <ol style="list-style-type: none"> <i>1. There are no physical works required in the proposed strata subdivision and no physical work to the fabric, setting or view corridors to or from the heritage item.</i> <i>2. The HAAP including the Cyclical Maintenance Schedule, prepared by Weir Phillips Heritage and Planning, to accompany the DA will ensure that the heritage item is maintained, conserved and protected.</i> <i>3. The strata plan subdivision will create 23 strata units within the new plan, the heritage item becoming one of them. The dwellings on the site will no longer be required to be sold as one allotment, making it easier for each unit to be managed.</i> <i>4. The strata subdivision will enable the heritage item to be under sole ownership. Sole ownership will ensure that the heritage item is maintained and conserved and not guided by a large body corporate that is required to manage the whole site of 23 residences.</i> <i>5. The common property will be maintained by all strata owners, keeping the immediate setting of the heritage item preserved as to not interrupt how the item is read within the streetscape and Sorrell Street Conservation Area.</i>

PLANNING ASSESSMENT

8. Environmental Planning Instruments

8.1 Overview

The instruments applicable to this application are:

- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Parramatta Local Environmental Plan 2023 (PLEP 2023)
- Parramatta Development Control Plan 2011 (PDCP 2011)

Compliance with these instruments is addressed below.

8.1 STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

Part 3 Retention of existing affordable rental housing	
46 Buildings to which Part applies	
(1) This Part applies to a low-rental residential building on land within the following areas— (a) the Eastern Harbour City, (b) the Central River City, (c) the Western Parkland City, (d) the Central Coast City, (e) the City of Newcastle local government area, (f) the City of Wollongong local government area.	Yes Property is located within the Western Parkland City
(2) This Part does not apply to a building— (a) approved for subdivision under the <i>Strata Schemes Development Act 2015</i> , or	N/A Building was not approved for subdivision under the <i>Strata Schemes Development Act 2015</i> . Application is seeking strata subdivision.
(b) for which development consent has been granted under Chapter 3, Part 5, or	N/A Building was not granted approval as a “Housing for seniors and people with a disability” under Chapter 3, Part 5
(c) owned by, or under the care, control and management of, a social housing provider.	N/A Building is not owned by, or under the care, control and management of, a social housing provider.
47 Reduction of availability of affordable housing	
(1) Development for the following purposes, in relation to a building to which this Part applies, is permitted with development consent— (a) demolishing the building, (b) altering or adding to the structure or fabric of the inside or outside of the building, (c) changing the use of the building to another use, (d) if the building is a residential flat building—strata subdivision of the building.	Yes Application is for strata subdivision of the building, which is defined as a residential flat building.
2) In determining whether to grant development consent, the consent authority must take into account the <i>Guidelines for the Retention of Existing Affordable Rental Housing</i> , published by the Department in October 2009 and the following— (a) whether the development will reduce the amount of affordable housing in the area, (b) whether there is available sufficient comparable accommodation to satisfy the demand for the accommodation, (c) whether the development is likely to result in adverse social and economic effects on the general community, (d) whether adequate arrangements have been made to assist the residents who are likely to be displaced to	N/A The proposal relates to buildings that are identified to be excluded from Part 3 of the Affordable Rental Housing SEPP as Part 3 only applies to residential flat buildings that became low rental dwellings before 28 January 2000. In this instance the existing building did not obtain development approval until 5 November 2001. As Part 3 does not apply, no conditions requiring contributions for the loss of affordable housing can be imposed, even if the building meets the definition of “affordable housing”.

<p>find comparable accommodation, (e) the extent to which the development will contribute to a cumulative loss of affordable housing in the local government area, (f) whether the building is structurally sound, including— (i) the extent to which the building complies with relevant fire safety requirements, and (ii) the estimated cost of carrying out work necessary to ensure the building is structurally sound and complies with relevant fire safety requirements, (g) whether the imposition of an affordable housing condition requiring the payment of a monetary contribution would adequately mitigate the reduction of affordable housing resulting from the development, (h) for a boarding house—the financial viability of the continued use of the boarding house.</p>	
<p>(3) Sufficient comparable accommodation is conclusively taken not to be available if, for the 3 months occurring immediately before the development application is lodged, the average vacancy rate in private rental accommodation for Sydney, as published monthly by the Real Estate Institute of New South Wales, is less than 3%.</p>	<p>N/A The buildings are excluded from the provisions of the guidelines, further assessment is not required.</p>
<p>(4) The continued use of a boarding house is financially viable if the rental yield of the boarding house, as determined under section 48(4), is at least 6%.</p>	<p>N/A Building is not a boarding house</p>

8.2 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

Chapter 2 Vegetation in non-rural areas

The State Environmental Planning Policy (Biodiversity and Conservation) 2021 applies to the site. The aims of the plan are to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of the non-rural areas of the State through the preservation of trees and other vegetation.

In this instance the proposal is limited to a Strata Subdivision of already existing buildings, no physical works to the existing buildings or anywhere else on-site form part of this application, further assessment is therefore not required.

Chapter 6 Water Catchments

The site is not located on the foreshore or adjacent to a waterway and therefore, the objectives of the SEPP are not applicable to the proposed development.

8.3 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

The development is consistent with the controls contained within the deemed SEPP.

- A site inspection reveals the site does not have an obvious history of a previous land use that may have caused contamination.
- Historic aerial photographs were used to investigate the history of uses on the site.
- A search of Council records did not include any reference to contamination on site or uses on the site that may have caused contamination.
- A search of public authority databases did not include the property as contaminated.

- The Statement of Environmental Effects states that the property is not contaminated. There is no specific evidence that indicates the site is contaminated and is suitable for the residential use.

Therefore, in accordance with Clause 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021, the land is suitable for residential use.

8.4 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021 – CHAPTER 2 INFRASTRUCTURE

The relevant matters to be considered under Chapter 2 of the SEPP for the proposed development are outlined below.

Chapter 2	Comment
Clause 2.48 – electricity infrastructure	N/A.
Clause 2.119 – frontage to a classified road	The site does not front a classified road
Clause 2.98 – Development adjacent to rail corridors	The subject site is not adjacent to a rail corridor.
Clause 2.120 - average daily traffic volume of more than 40,000 vehicles	Both Albert and Isabella Street have less than 20,000 vehicles per day.

9. Parramatta Local Environmental Plan 2023

The relevant matters considered under the PLEP 2023 for the proposed development are outlined below:

Clause 1.2 Aims of Plan

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,
- (a) to encourage a range of development, including housing, employment and recreation, that accommodates the needs of the existing and future residents, workers and visitors of Parramatta,
- (b) to foster environmental, economic, social and physical wellbeing so that Parramatta develops as an integrated, balanced and sustainable city,
- (c) to identify, conserve and promote Parramatta’s natural and cultural heritage as the framework for its identity, prosperity, liveability and social development,
- (d) to improve public access to the city and facilitate the maximum use of improved public transport, together with walking and cycling,
- (e) to minimise risk to the community in areas subject to environmental hazards, particularly flooding and bushfire, by restricting development in sensitive areas,
- (f) to protect and enhance the natural environment, including areas of remnant bushland in Parramatta, by incorporating principles of ecologically sustainable development into land use controls,
- (g) to improve public access along waterways where natural values will not be diminished,
- (h) to enhance the amenity and characteristics of established residential areas,
- (i) to retain the predominant role of Parramatta’s industrial areas,
- (j) to ensure that development does not detract from the economic viability of Parramatta’s commercial centres,
- (k) to ensure that development does not detract from the operation of local or regional road systems,
- (l) to ensure development occurs in a manner that protects, conserves and enhances natural resources, including waterways, riparian land, surface and groundwater quality and flows and dependant ecosystems,
- (m) to protect and enhance the viability, identity and diversity of the Parramatta City Centre and recognise it as the pre-eminent centre in the Greater Metropolitan Region,
- (n) to encourage development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles.

The proposal does not contain any physical works and will not result in any environmental or amenity impacts to surrounding areas. The proposal is considered to result in increased management and maintenance of the site including the heritage item and therefore supports objectives for conservation of cultural heritage. It is considered that the development satisfactorily meets the aims of the plan.

Permissibility

The site is zoned partly R2 Low Density Residential and R4 High Density Residential under the Parramatta LEP 2023. The proposal is defined as a Strata Subdivision of an existing residential flat building which although is permissible in the R4 zone with consent of Council, the existing residential flat building is a prohibited use in the R2 zone.

The proposed Strata Subdivision relates to a residential flat building that has been approved and constructed before commencement of the existing planning instruments and therefore may benefit from the provisions of existing use rights. Clause 4.65 of the EPA Act 1979 concerning the definition of existing use rights states the following:

4.65 Definition of “existing use”

- (a) *the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and*
- (b) *the use of a building, work or land—*
 - (i) *for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
 - (ii) *that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.*

Planner’s response –

In this instance, the proposed Strata Subdivision relates to a residential flat building approved 5 November 2001 via DA/1230/2000 and under superseded development controls previously allowing the construction of the building. The residential flat building was also approved before commencement of the LEP 2023 which has the effect of prohibiting the use.

The Environmental Planning and Assessment Act 1979 controls the limitations of existing use with clause 4.66 stating the following:

4.66 Continuance of and limitations on existing use

- 1) *Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.*
- 2) *Nothing in subsection (1) authorises—*
 - (a) *any alteration or extension to or rebuilding of a building or work, or*
 - (b) *any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or*
 - (c) *without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or*
 - (d) *the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17(1)(b), or*
 - (e) *the continuance of the use therein mentioned where that use is abandoned.*
- 3) *Without limiting the generality of subsection (2)(e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.*

Planner’s response –

The proposal does not include any alteration, extension, enlargement or expansion. The proposal is limited to Strata Subdivision with no physical works proposed. Furthermore, Council records do not indicate the approved use as being ceased or abandoned for a continuous period of at least 12 months at any point and therefore in accordance with the clause, the site is considered to maintain the benefits of existing use rights provisions.

Part 7 of the Environmental Planning and Assessment Regulations which concerns existing uses has been reviewed. However, as the proposal does not propose the enlargement, expansion, intensification or change of existing uses, further consideration of the clauses under this part is not required.

As the proposal is related to land that contains existing use rights, the established criteria for the assessment of existing use rights set out under *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71 has been referred to. As part of the assessment criteria, four questions arise concerning assessment of existing use rights, a review of the criteria is outlined below:

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

Planner's response –

The proposal does not compromise of any physical works, no changes to bulk and scale to the existing development will result from the proposed Strata Subdivision.

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

Planner's response –

The proposed Strata Subdivision will not alter the existing bulk and scale of the existing development. No physical works are proposed including any demolition works.

What are the impacts on adjoining land?

Planner's response –

Adjoining land comprises of development similar to that which exists on site and includes a residential flat building located on 52 Albert Street which is also zoned R2 Low Density Residential Land. The proposed subdivision will not result in any impacts to adjoining land. All currently existing levels of amenity will remain unaltered.

What is the internal amenity?

Planner's response –

The internal amenity will remain physically unaltered, no changes form part of the proposal that can alter internal amenity for the site. However, it is considered the inclusion if a Heritage Conservation Plan will contribute to increased preservation of the heritage values of the site which will contribute towards preserved amenity.

After a merit assessment of the assessment criteria, it is considered that the proposed Strata Subdivision does not conflict with the provisions of existing use rights that are established as applying to the site. Although the proposal relates to a development that is considered prohibited in the zone, the consent authority can continue to consider and determine the application.

Clause 2.3 Zone objectives and Land Use Table

The objectives of the R2 Low Density Residential Zone are outlined 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 maintain the low density residential character of the area.
- To ensure non-residential land uses are carried out in a way that minimises impacts on the amenity of a low density residential environment.
- To provide a range of community facilities that serve the needs of people who live in, work in and visit the area.
- To protect and enhance tree canopy, existing vegetation and other natural features.

The proposal is not considered to defer from the objectives of the zone as it maintains the low-density characteristics of the site including the heritage cottage while increasing the maintenance and preservation of these characteristics.

The objectives of the R4 High Density Residential Zone are outlined below:

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for high density residential development close to open space, major transport nodes, services and employment opportunities.
- To provide opportunities for people to carry out a reasonable range of activities from their homes if the activities will not adversely affect the amenity of the neighbourhood.

The proposal is not considered to defer from the objectives of the zone as it is limited to the increased management of the residential environment of the site, no physical changes are proposed that will result in detrimental impacts to the site or surrounding area.

10. Parramatta Local Environmental Plan 2023

The relevant matters to be considered under Parramatta Local Environmental Plan 2023 for the proposed development are outlined below.

Standards and Provisions	Compliance
Part 4 Principal development standards	
Cl. 4.1A Minimum Lot Size for strata plan schemes in Zone R2 = 550m ²	No (supported on Merit) Clause 4.1A applies to the portion of land zoned R2 Low Density Residential that is also used for residential accommodation. In accordance with this clause a lot resulting from a subdivision of land by strata plan scheme must not be less than the minimum size shown on the lot size map which in this case prescribes a minimum size of 550m ² to the site. In this instance the portion of the proposal located on R2 zoned land proposes Strata Subdivision of existing units measuring between 87m ² to 137m ² . This results in a variation of 84.2% (or 463m ²) to the control. See discussion below.
Cl. 4.3 Height of buildings = 9m (Zone R2) = 11m (Zone R4)	N/A No change proposed.
Cl. 4.4 Floor space ratio = 0.8:1 (or 2410.4m ²)	N/A No change proposed.
Cl. 4.6 Exceptions to Development Standards	Yes See discussion below.
Part 5 Miscellaneous provisions	
Cl. 5.1A Development on land intended to be acquired for public purposes	N/A Site does not contain land to be acquired for public purpose.
Cl. 5.3 Development near zone boundaries	Yes The site is subject to zone boundaries shared between the R2 Low Density and R4 High Density Residential zones, therefore clause 5.3 applies. In this instance the proposal is for Strata Subdivision, which is permissible in each zone, and is consistent with the objectives of each zone, as such the consent authority can be satisfied that the provisions of the clause are met for the purposes of granting development consent. Note: No benefits as they relate to this clause are being used in relation to the current proposal.
Cl. 5.4 Controls relating to miscellaneous permissible uses	N/A None proposed.
Cl. 5.6 Architectural roof features	N/A None proposed.

Cl. 5.7 Development below mean high water mark	N/A The proposal is not for development on land that is covered by tidal waters.
Cl. 5.10 Heritage conservation	Yes The site maintains a Heritage item known as “Whiteoak” which is an item of local significance. The site is also located within the Sorrell Street Heritage Conservation area. The proposal is accompanied by a Heritage Impact Assessment as well as a Heritage Asset Action Plan. Council’s Senior Heritage Specialist has reviewed the application and supporting documents and supports the proposal subject to conditions.
Cl. 5.11 Bush fire hazard reduction	N/A The site is not mapped as bushfire prone land.
Cl. 5.21 Flood Planning	N/A The site is not identified as flood prone land.
Part 6 Additional local provisions	
Cl. 6. 1 Acid sulfate soils	N/A The site is for Strata Subdivision, no works are proposed, and there are no impacts to soils expected.
Cl. 6. 2 Earthworks	N/A None proposed.
Cl. 6. 3 Biodiversity	N/A The site is not mapped as being subject to biodiversity values.
Cl. 6. 4 Riparian land and waterways	N/A The site is not impacted by Riparian land or waterways.
Cl. 6. 5 Stormwater management	N/A No change proposed.
Cl. 6. 6 Foreshore area	N/A The proposal is not located within a foreshore area.
Cl. 6. 8 Landslide risk	N/A The site is not impacted by risk to landslide.

Clause 4.6 Exceptions to Development Standards – Minimum subdivision lot size for strata plan schemes in Zone R2

As stated above, the application relates to a residential flat building approved prior to the commencement of the PLEP 2023, since construction completed, there has not been an application for the development to be strata subdivided and therefore the entire site remains under one lot. The existing development is partly located on land zoned R2 Low Density Residential (see **figure 2**), therefore the provisions of clause 4.1A apply. It is noted that only the specific portions of the site zoned R2 Low Density Residential are subject to this clause. Land zoned R4 High Density Residential and the proposed strata units located entirely within this land remain unaffected. Clause 4.1A is outlined below:

4.1A Minimum subdivision lot size for strata plan schemes in Zone R2

- (1) *The objectives of this clause are as follows—*
 - (a) *to ensure land is not fragmented by subdivisions that create additional dwelling entitlements,*
 - (b) *to provide for the subdivision of land at a density appropriate for the site constraints, development potential and infrastructure capacity of the land.*
- (2) *This clause applies to land in Zone R2 Low Density Residential that is used, or is proposed to be used, for residential accommodation or tourist and visitor accommodation.*
- (3) *A lot resulting from a subdivision of the land for a strata plan scheme, other than a lot comprising common property, within the meaning of the Strata Schemes Development Act 2015, must not be less than the minimum size shown on the Lot Size Map for the land.*

In this instance the minimum lot size map (see **figure 4**) prescribes a minimum lot size of 550m² to the site, therefore any lot created as a result of Strata Subdivision that is also within land zoned R2 Low Density Residential

is required to maintain a minimum lot area of 550m². In this instance five proposed lots are located entirely or partially within R2 zoned land, these being:

- proposed lot 1 which contains the heritage item (137m²),
- proposed lot 2 which contains a townhouse unit (103m²),
- proposed lots 4, 5 and 17 which contain units forming portions of the residential flat building which encroaches within the R2 zoned land (95m², 87m² and 100m² respectively).

The proposed units will measure less than 550m² which represents a variation to the control. The largest variance is identified in proposed strata lot 5 which measures 87m² and results in a variation of 84.2% (or 463m²).

Clause 4.6 of PLEP 2011 allows Council to provide an appropriate degree of flexibility in applying certain development standards, where flexibility would achieve better outcomes.

Clause 4.6(1) – Objectives of Clause 4.6

- (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.*

Clause 4.6(2) – Operation of Clause 4.6

The operation of clause 4.6 is not limited by the terms of Clause 4.6(8) of this LEP, or otherwise by any other instrument.

Clause 4.6(3) – The Applicant’s written request 4.6

Clause 4.6(3) requires that the applicant provide a written request seeking to justify contravention of the development standard. The request must demonstrate that:

- “(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.”*

The applicant has submitted a written request justifying the variation to the proposed strata lot size development standard. In the justification the applicant states:

“The proposed development meets the zone objectives and the development objectives.”

Planner’s response – The site is partly located on zone R2 and R4, the proposal is limited to Strata Subdivision and is not considered to defer from the objectives of the zone as it maintains the low-density characteristics of the site including the heritage cottage while increasing the maintenance and preservation of these characteristics.

“The proposed development is compatible with existing and future built form within the surrounding locality.”

Planner’s response – The proposal is compatible with the existing and future built form as it is considered to enhance the preservation of heritage amenity and will maintain the existing built profile of a small scale residential flat building which is compatible within an area that maintains many examples of sufficiently similar development.

“The proposal will not result in any unreasonable amenity or environmental impacts.”

Planner’s response – The proposal is limited to Strata Subdivision, there will be no measurable impacts to amenity or the environment as the proposal will not result in any physical changes to the existing development. The proposal is however considered to positively respond to the heritage amenity of the area through increased preservation of heritage values that apply to the site.

“The proposed strata subdivision will not result in any negative impacts on the land or the character of the area.”

Planner’s response – The proposal is ordinary and typically anticipated for development types such as that existing on site. There are no physical changes, and no negative impacts are expected as a result of the Strata Subdivision.

An assessment against the relevant case law established in the NSW Land and Environment Court has been undertaken below. These cases establish tests that determine whether a variation under Clause 4.6 of an LEP is acceptable and whether compliance with the standard is unreasonable or unnecessary.

Wehbe v Pittwater Council

Case law in the NSW Land & Environment Court has considered circumstances in which an exception to a development standard may be well founded. In the case of *Wehbe v Pittwater Council [2007] NSWLEC 827* the presiding Chief Judge outlined the following five (5) circumstances:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

Subdivision lot size for strata plan objectives

(a) to ensure land is not fragmented by subdivisions that create additional dwelling entitlements,

Planner’s response - The proposal relates to land that has hosted the existing development for a number of years, the proposed subdivision will not result in the fragmentation of land nor will result in additional dwelling entitlements.

(b) to provide for the subdivision of land at a density appropriate for the site constraints, development potential and infrastructure capacity of the land.

Planner’s response - The proposed Strata Subdivision will relate to an existing development considered as appropriate in size, form and function within the context of the site and immediate surrounds.

2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

Planner’s response - The current LEP allows for the construction of dual occupancies where in the event of Strata Subdivision, will result in lots significantly smaller than 550m². In this instance the purpose of clause 4.1A is considered to be concerned with the controlling of subdivision of lower scale development ordinarily associated with the R2 Low density zone, as opposed to the restriction of the subdivision of residential flat buildings located on the same zone that coincidentally maintain the benefits of existing use rights. It can be reasonably considered that that underlying purpose of the standard is not relevant to the current proposal and that compliance with this standard would be unnecessary.

3. *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

Planner’s response - The sole reason for the non-compliance is understood to be due to a historical approval for high density development on what is now low-density zoning, the underlying objective is considered to be thwarted.

4. *The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*

Planner’s response - The applicant does not challenge that the development standard is abandoned. The applicant has noted the specific development standard that applies has only recently come into effect after

commencement of the new LEP, the specific development standard did not form part of the previous superseded planning controls.

5. *The zoning of particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.*

Planner's response - The zoning (R2 Low Density Residential) of the particular land is unreasonable or inappropriate due to the pre-existing nature of higher density residential development on site. The site is also noted to be predominantly zoned R4 High Density Residential. It is further noted that the development does not interfere with the objectives of the zone but rather the newly formed development standard controlling Strata Subdivision that is associated with the zone, which did not exist in superseded development standards.

Four2Five Pty Ltd v Ashfield Council

The proposal has been assessed on merit and having regard to the principles in *Four2Five v Ashfield Council [2015] NSWLEC 90*. The judgement suggests that 'sufficient environmental planning grounds' is more onerous than compliance with zone and standard objectives. The commissioner also established that the additional grounds had to be particular to the circumstances of the proposed development, and not merely grounds that would apply to any similar development.

Comment: It has been demonstrated that environmental planning grounds exist to justify contravening the development standard. The additional grounds are particular to the circumstances of the proposed development which utilizes existing use rights that concern a residential flat building within the R2 Low Density Residential zone which simultaneously has not yet been strata subdivided.

Al Maha v Huajun Investments & Baron Corporation v Council of the City of Sydney

The proposal has been assessed on merit and having regard to the principles in *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245* and *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*.

Al Maha provides that the consent authority (or Commissioner in that instance) "had to be satisfied that there were proper planning grounds to warrant the grant of consent, and that the contravention was justified" [21].

Baron elaborates on *Al Maha* in that "the consent authority's consideration of the applicant's written request, required under cl 4.6(3), is to evaluate whether the request has demonstrated the achievement of the outcomes that are the matters in cl 4.6(3)(a) and (b). Only if the request does demonstrate the achievement of these outcomes will the request have "adequately addressed the matters required to be demonstrated" by cl. 4.6(3), being the requirement in cl. 4.6(4)(a)(i) about which the consent authority must be satisfied. The request cannot "adequately" address the matters required to be demonstrated by cl 4.6(3) if it does not in fact demonstrate the matter" [78].

Planner's response - In this instance, Council is satisfied that the applicant's Clause 4.6 Statement adequately addresses the matters in Clause 4.6(3) of PLEP2023. It has proven that strict compliance is not feasible as the noncompliance is required to appropriately respond to the site constraints regarding the existing development, zoning and provisions of existing use rights.

Clause 4.6(4) - Consent Authority Assessment of Proposed Variation

Clause 4.6(3) of PLEP 2023 outlines that development consent must not be granted for development that contravenes a development standard unless 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.*

Planner's response - The matters of clause 4.6(3)(a) and Clause 4.6(3)(b) have been dealt with in the preceding

section.

Conclusion: It is considered that the applicant's written request has adequately addressed the matters required to be demonstrated and that the request to vary the strata lot size development standard within Parramatta LEP 2023 can be supported as the proposal achieves the objectives of the Strata Subdivision development standard as well as the objectives of the R2 Low Density Residential zone. In reaching this conclusion, regard has been given to the relevant Judgements of the LEC.

11. Parramatta Development Control Plan 2011 (PDCP 2011)

As previously mentioned, the proposal is limited to a Strata Subdivision of an already existing development approved via DA/1230/2000. The proposed subdivision plans match the approved plans of the existing development. A review of PDCP 2011 has not raised any compliance issues however as the site is limited to Strata Subdivision and no physical works are proposed, no development standards as set out under the PDCP 2011 apply. The site however has been identified as impacted by Heritage values, additional comment regarding the heritage aspect has been included below.

Section 4.4 Heritage Conservation Areas	
4.4.4 North Parramatta and Sorrell Street	<p>The proposal does not result in Torrens title subdivision or boundary realignment that would alter the historic development pattern, physical works including alterations and additions to existing buildings or ancillary structures are not proposed.</p> <p>It is considered that the introduction and application of a Heritage Asset Action Plan which outlines and manages the appropriate conservation of the heritage item and heritage values as they apply to the site, results in an improvement to the site and its abilities to comply with heritage objectives as outlined under the relevant development standards.</p> <p>The application and supporting documents have been reviewed by Council's Senior Heritage Specialist who has indicated support for the proposal subject to conditions.</p>

12. Parramatta Development Control Plan 2023

The Parramatta Development Control Plan 2023 (PDCP 2023) was placed on public exhibition from 13 March 2023 to 1 May 2023. The draft PDCP will replace the five previous DCPs that applied within the Local Government Area and serves as a primary supportive planning document to the Parramatta Local Environmental Plan 2023 for guiding development and land use decisions made by Council.

On Monday 28 August Council adopted the PDCP 2023, formal commencement of the PDCP 2023 began 18 September 2023.

Section 1.4 of the adopted PDCP 2023 which concerns the relationship to other plans and policies is outlined below:

If a Development Application has been lodged before the commencement of the draft DCP in relation to land to which the draft DCP applies, and the Development Application has not been finally determined before the commencement of the draft DCP, the Development Application must be determined as if the draft DCP had not commenced.

In this instance the application was lodged 6 June 2023 and therefore is to be assessed under the Parramatta Development Control Plan 2011. However, it is acknowledged that all future development is to be assessed under the new consolidated PDCP 2023.

Whilst the application has been assessed under the Parramatta Development Control Plan 2011, it is noted that the proposal does not unreasonably defer from the aims and objectives of the PDCP 2023 and is considered complimentary of the expected future design and character of the area.

13. Development Contributions

In accordance with the City of Parramatta (Outside CBD) Development Contributions Plan 2021, a Section 7.11 Development Contribution is not required to be paid as the proposal is limited to the Strata Subdivision of an existing development which is listed as development that is exempted from this plan.

14. Bonds

No physical works are proposed as part of the proposed Strata Subdivision; therefore no Security Bonds are required in this instance in accordance with Council's Schedule of Fees and Charges.

15. EP&A Regulation 2021

Applicable Regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia, compliance with the Home Building Act, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection have been addressed by appropriate consent conditions where relevant, refer to Appendix 1.

16. The likely impacts of the development

The assessment demonstrates that the proposal will not have any significant adverse impacts upon any adjoining properties or the environment through compliance with the applicable planning instruments and controls. All relevant issues regarding environmental impacts of the development are discussed elsewhere in this report, including natural impacts such as tree removal and excavation, and built environment impacts such as traffic and build form. In the context of the site and the assessments provided by Council's experts, the development is considered satisfactory in terms of environmental impacts.

17. Suitability of the Site

The subject site can continue to accommodate for a residential flat building development as the site originally required services and facilities to enable efficient and safe operation of the use without causing further impacts on the amenity of surrounding properties and, remains ideally located close to public transport links, services and facilities.

Suitable investigations and documentation have been provided to demonstrate that the site can be made suitable for the proposed development and the development is consistent with the land use planning framework for the locality.

No natural hazards or site constraints exist that are likely to have an unacceptably adverse impact on the proposed development.

Subject to the conditions provided within the recommendation to this report, the site is considered to be suitable for the proposed development.

18. Public Consultation

The application was notified between 14 June 2023 and 28 June 2023 in accordance with Council's notification procedures contained within Appendix 1 of the Consolidated Notification Requirements of the City of Parramatta Community Engagement Strategy. In response, no submissions were received.

The application was not required to be notified upon receiving additional information on 27 November as the additional information did not result in any changes to the proposal and did not result in an increased impact to surrounding areas.

19. Public interest

Subject to implementation of conditions of consent outlined in the recommendation below, no circumstances have been identified to indicate this proposal would be contrary to the public interest.

20. Conclusion

The application has been assessed relative to section 4.15 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls.

The proposed development is appropriately located within a locality. The request to vary the lot size standard is considered to be well founded for reasons including, but not limited to, existing nature of the development and provisions of existing use rights as they continue to apply.

Having regard to the assessment of the proposal from a merit perspective, Council officers are satisfied that the development has been appropriately considered and will not result in changes of amenity for existing or future residents. It is considered that the proposal maintains no adverse impacts on the amenity of neighbouring properties. Hence the development, irrespective of the departures noted above, is consistent with the intentions of the relevant planning controls and represents a form of development contemplated by the relevant statutory and non-statutory controls applying to the land. On balance, the proposal has demonstrated a satisfactory response to the objectives and controls of the applicable planning framework.

For these reasons, it is considered that the proposal is satisfactory having regard to the matters of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979 and is recommended for approval subject to conditions.

21. Recommendation

Pursuant to Section 4.16 of the Environmental Planning and Assessment Act, 1979:

- A. **That** the Parramatta Local Planning Panel, exercising the function of the consent authority, **approve** development consent to DA/318/2023 for the Strata Subdivision of Existing Residential Flat Building Complex on land at 54-56 Albert Street, North Parramatta for the following reasons:
- a. The development maintains provisions for existing use rights.
 - b. The development is permissible in the R4 zone pursuant to the Parramatta Local Environmental Plan 2023, and maintains existing use rights pursuant to the Environmental Planning and Assessment Act 1979.
 - c. The development will be compatible with the emerging and planned future character of the area.
 - d. The development will continue to provide housing that accommodates the needs of the existing and future residents, workers and visitors of Parramatta.
 - e. For the reasons given above, approval of the application is in the public interest.
- B. **That** Council advise those who made a submission of the determination.

DRAFT CONDITIONS OF CONSENT

Upon the signature of the applicable delegate, the conditions in this Appendix will form the conditions of development consent.

Development Consent No.: DA/318/2023
Property Address: Lot 200 DP 1104602
54-56 Albert Street, NORTH PARRAMATTA
NSW 2151

PART A – GENERAL CONDITIONS

PA0001 #Approved Plans & Supporting Documents

1. Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise:

Architectural Drawings prepared by: Richard Hogan and Co Pty Ltd

Drawing/Plan No.	Issue	Plan Title	Dated
22456	-	Location Plan	March 2023
22456	-	Basement Plan	2023
22456	-	Ground Floor Plan	2023
22456	-	First Floor Plan	2023

Specialist Reports

Document	Prepared By	Dated
Statement of Heritage Impact	Weir Phillips Heritage and Planning	27/11/2023
Heritage Asset Action Plan	Weir Phillips Heritage and Planning	November 2023

Note: In the event of any inconsistency between the approved plans and/or the civil drawings and/or landscape plans and/or supporting documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of consent, the condition prevails.

An inconsistency occurs between an approved plan and supporting

documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development

PART E – BEFORE THE ISSUE OF AN OCCUPATION CERTIFICATE

PE0006 Street Number when site readily visible location

2. A street number is to be placed on the site in a readily visible location from a public place prior to the issue of an Occupation Certificate. The numbers are to have a minimum height of 75mm.

Reason: To ensure a visible house number is provided.

DENSC Non-standard - Prior to issue of Occ/Sub Cert. Prior to the issue of a Strata Subdivision, Certificate

3. A Notification Agreement outlining the electrical construction requirements and associated fees shall be obtained from an energy provider prior to the release of the subdivision certificate.

Reason: To ensure electricity supply is available to all properties.

4. The submission of documentary evidence from the telecommunications provider authorised under the Telecommunications Act 1997 confirming arrangements have been made for the provision of telephone services prior to the issue of a Subdivision Certificate.

Reason: To ensure appropriate telephone services are provided.

DE0006 Section 73 Certificate

5. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained prior to the issue of any Occupation Certificate. The application must be made through an authorised Water Servicing Coordinator. Please refer to “Your Business” section of Sydney Water’s web site at www.sydneywater.com.au then the “e-developer” icon or telephone 13 20 92.

Reason: To ensure the requirements of Sydney Water have been complied with.

DE0008 Compliance with Development Consent

6. The strata subdivision certificate will not be issued until a final Occupation Certificate has been submitted to Council.

Reason: To ensure compliance with the Environmental Planning and Assessment Act 1979 and conditions of consent.

7. A separate application must be made for a Strata Subdivision Certificate. The following information shall also be submitted:
- (a) Evidence that all relevant conditions of this development consent (DA/318/2023) have been satisfied.
 - (b) Evidence of payment of all relevant fees.
 - (c) Linen Plans, 88B Instrument and Deposited Plan Administration Sheets, all generally in accordance with the requirements, final draft plans and documents.
 - (d) All relevant surveyors or engineers' certification if required by the development consent.

Reason: To comply with the requirements of the Environmental Planning and Assessment Act 1979 (as amended).

AENSC Non-standard - Prior to issue of Occ/Sub Cert/Use

8. A cyclical maintenance plan specifying frequency and methodologies to conduct building inspections and maintenance works to building elements and services has been submitted and approved by Council's DTSU, Manager of Technical Specialist and the Heritage Advisor. The maintenance plan is to be implemented as required by a suitably qualified heritage consultant and endorsed by the building owner.

As referred and concerned by the Heritage Asset Action Plan prepared by Weir Phillips Heritage and Planning.

Reason: To ensure compliance with the Heritage Asset Action Plan.

AENSC Non-standard - Prior to issue of Occ/Sub Cert/Use

9. The conservation work schedule, detailing methodologies and policies for implementation of the recommendations of the Heritage Asset Action Plan prepared by Weir Phillips Heritage and Planning, dated November 2023 is to be submitted to and approved by Council to accompany the Statement of Heritage Impact prepared by Weir Phillips Heritage and Planning, dated November 2023.

The conservation strategy and policy contained in the HAAP includes recommendations, additional details including detailed drawings and an outline of specifications of works may be required to support any future schedule of conservation works.

The work schedule must be implemented to the satisfaction of Council's DTSU, Group Manager of DTSU prior to the issue of any Occupation Certificate.

Reason: To ensure appropriate controls are in place for preservation of heritage amenity.

PART F – OCCUPATION AND ONGOING USE

PF0004 External Plant/Air-conditioning noise levels

10. Any external plant/air-conditioning system must not exceed a noise level of 5dBA above the background noise level when measured at the boundaries of the property.

Reason: To minimise noise impact of mechanical equipment.

PF0049 Graffiti Management

11. The owner/manager of the site/business is responsible for the removal of all graffiti from the building/structures/signage and/or fencing within 48 hours of its application.

Reason: To ensure the removal of graffiti.

Date: 23 January 2024
Responsible Officer: Cade Tracey