

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

Notice is hereby given that the Northern Beaches Planning Panel will be held via teleconference on

WEDNESDAY 17 MARCH 2021

Beginning at 12.00pm for the purpose of considering and determining matters included in this agenda.



Peter Robinson
Executive Manager Development Assessment

Panel Members

Lesley Finn	Chair
Steve Kennedy	Urban Design Expert
Robert Hussey	Town Planner
Ray Mathieson	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 17 March 2021

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Northern Beaches Local Planning Panel held 11 March 2021	Error! Bookmark not defined.
3.0	PUBLIC MEETING ITEMS	5
3.1	DA2020/1228 - 25 Nield Avenue, Balgowlah - Demolition works and construction of two semi-detached dwellings including swimming pools and Torrens title subdivision	5
3.2	DA2020/1235 - 888 Pittwater Road, Dee Why - Use of premises as a car wash facility including fitout.....	61
3.3	DA2020/1162 - 27 Bellevue Avenue, Avalon Beach - Demolition works and construction of three senior's living apartments with parking.....	85
4.0	NON PUBLIC MEETING ITEMS	138
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.	
4.1	DA2020/1581 - 10 Government Road, Beacon Hill - Demolition works and subdivision of one lot into two lots.....	138
4.2	DA2020/1386 - 31 Oxford Falls Road, Beacon Hill - Subdivision of one lot into two, alteration to the existing dwelling, new driveway and parking	186

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 3 MARCH 2021

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 3 March 2021 were adopted by the Chairperson and have been posted on Council's website.

3.0 PUBLIC MEETING ITEMS

ITEM 3.1	DA2020/1228 - 25 NIELD AVENUE, BALGOWLAH - DEMOLITION WORKS AND CONSTRUCTION OF TWO SEMI- DETACHED DWELLINGS INCLUDING SWIMMING POOLS AND TORRENS TITLE SUBDIVISION
AUTHORISING MANAGER	Anna Williams
TRIM FILE REF	2021/178553
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/1228 for demolition works and construction of two semi-detached dwellings including swimming pools and Torrens Title subdivision at Lot 16 DP 6363, 25 Nield Avenue, Balgowlah subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1228
----------------------------	-------------

Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 16 DP 6363, 25 Nield Avenue BALGOWLAH NSW 2093
Proposed Development:	Demolition works and construction of two semi-detached dwellings including swimming pools and Torrens title subdivision
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Terese Helen Johninke Mark Paul Johninke
Applicant:	Ads Architecture Design Studio (NSW) Pty

Application Lodged:	08/10/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	19/10/2020 to 02/11/2020
Advertised:	Not Advertised
Submissions Received:	15
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 894,300.00
---------------------------------	---------------

EXECUTIVE SUMMARY

The proposal seeks consent for demolition works, subdivision of one lot into two and the construction of two semi-detached dwelling houses.

The proposed development complies with the Height of buildings, Floor space ratio and Minimum subdivision lot size development standards.

Fifteen (15) submissions were received raising concerns including bulk and scale, view loss, overshadowing, visual privacy, traffic, parking and earthworks. These issues form the key environmental planning issues of this application. A detailed assessment has been conducted and found the application to be satisfactory for approval.

The application has been referred to the Northern Beaches Local Planning Panel due to having more than 10 unique submissions.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition works, subdivision of one lot into two and the construction of two semi-detached dwelling houses. Specifically consent is sought for:

- Demolition of the existing dwelling house and associated structures;
- Torrens title subdivision of the existing single lot into two lots;
- Construction of two semi-detached dwelling houses, comprising;
 - Double Garage
 - 4 Bedrooms
 - Balconies on level 1 and level 2.
- Tree removal;
- Associated landscaping;
- New driveway and crossover.

AMENDED PLANS

Following a preliminary assessment of the application Council wrote to the applicant on 23 December 2020 outlining concerns that would not allow for Council to support the application in its current form. The concerns related to building height and floor space ratio non-compliance, bulk and scale, characterisation of development and insufficient information. Following receipt of the letter the applicant advised that they intended to amend the development application. Council agreed to accept amendments to the application.

The applicant subsequently provided amended plans to address the concern raised on 29 January 2021. The proposed amendments will have a reduced environmental impact on the adjoining properties and public open space than the original proposal. The amended plans result in a significant reduced size development, which is compliant with both the Height of Buildings and Floor Space Ratio Development Standards. Therefore, re-notification was not required in accordance with Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 16 DP 6363 , 25 Nield Avenue BALGOWLAH NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) corner allotment located on the western side of Nield Avenue and southern side of White Street</p> <p>The site is regular in shape with a primary frontage of 20.11m along Nield Avenue and a secondary frontage of 31.7m along White Street. The site has a surveyed area of 637.7m².</p> <p>The site is located within the R1 General Residential zone and accommodates a dwelling house.</p> <p>The site includes a significant rock outcrop to the rear of the property.</p> <p>The site includes a 4m cross fall from the northern side to the southern side of the property.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development typically dwelling houses and dual occupancy/semi-detached development.</p>

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Council to request additional information. Additional information was requested in relation to amended architectural plans and a geotechnical report.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/10/2020 to 02/11/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 15 submission/s from:

Name:	Address:
Mr Eric Russell Miller Mrs Leslie Richardson Miller	46 B West Street BALGOWLAH NSW 2093
Ms Pamela Diane Tustin	2 / 44 West Street BALGOWLAH NSW 2093
Mr Robert David Williams	48 White Street BALGOWLAH NSW 2093
Mr Peter Edward McAuliffe	1 / 44 West Street BALGOWLAH NSW 2093
Mr Christopher Paul Burton Ms Sophie Charlotte Fay	23 Nield Avenue BALGOWLAH NSW 2093
Mr Stephen Bruce Coulter	46 A West Street BALGOWLAH NSW 2093
Mr Peter John Robertson	11 / 201 - 207 Sydney Road FAIRLIGHT NSW 2094
Miss Kirsty Almond	14 Nield Avenue BALGOWLAH NSW 2093
Mr Jason Ralph Ierace	1 / 21 Nield Avenue BALGOWLAH NSW 2093
Mr Matthew Lovell Magraith	47 White Street BALGOWLAH NSW 2093
Mrs Julia Nina Lever	12 Nield Avenue BALGOWLAH NSW 2093
Ms Rhonda Morley	2 / 21 Nield Avenue BALGOWLAH NSW 2093
Mr Peter Hamilton West	3 / 48 West Street BALGOWLAH NSW 2093
Ms Judith Haverfield	PO Box 888 BALGOWLAH NSW 2093
Mr Richard John Gibbs	19 Nield Avenue BALGOWLAH NSW 2093

The following issues were raised in the submissions and each have been addressed below:

- **Traffic/Parking;**
- **Sunlight Access and Overshadowing;**
- **Height of Building and Floor Space Ratio non-compliance.**
- **Impact of development on rock outcrop;**
- **View Loss;**
- **Privacy;**
- **Boundary Fencing;**
- **Swimming Pool;**
- **Built form non-compliance;**
- **Stormwater;**
- **Density increase (noise);**
- **Biodiversity;**
- **Aboriginal Heritage;**

- **Heritage;**
- **Construction impacts;**
- **Loss of property value.**

The matters raised within the submissions are addressed as follows:

- **Traffic/Parking**
Comment:
Concern is raised in regards to traffic, safety and loss of on-street parking as a result of the proposed development. The development proposes compliant off-street parking for both dwellings, being two (2) off-street parking spaces for each dwelling. The driveway proposed is to be utilised for both dwellings for the off-street parking, and is not considered to be onerous or unreasonable. The resultant loss of street parking that will result from the proposed driveway is not unreasonable in this residential setting. In regards to access, the application has been reviewed by Councils Development Engineers. In summary, the proposed development is consistent with the underlying objectives of Clause 4.1.6 of the Manly DCP, subject to recommended conditions of consent, which have been included as part of this recommendation.
- **Sunlight Access and Overshadowing**
Comment:
Concerns have been raised in relation to the potential overshadowing created by the proposed development. The proposed development is multi storey, will be excavated into the natural landform and the site has a east-west orientation. The revised shadow diagrams, detail the shadowing impacts upon No. 23 Nield Avenue. A detailed assessment has been undertaken against the solar access provisions within this report. In summary, the development does not unreasonably overshadow adjoining properties living room windows and private open space of adjoining properties. The proposal complies with the requisite provisions of CI 3.4.1 of the Manly DCP.
- **Height of building and Floor space ratio non-compliance.**
Comment:
The proposed design of the house is sympathetic to the topography and landscape of Nield Avenue and the foreshore area, allowing for significant landscaping throughout the site, consistent with the numerical control under the Manly DCP. It is also noted that the proposal is consistent with the Floor space ratio and Height of buildings development standards the principal control of bulk and scale. The bulk and scale of the proposed development is not unreasonable in this residential setting, and doesn't warrant the refusal of the application.
- **Impact of development on rock outcrop.**
Comment:
Concern was raised in regards to potential impacts from upon the existing rock outcrop to the rear of the property. The revised plans dated 22 February 2021, delete the removal of the rock outcrop and delete the associated works on this part of the site including the proposed swimming pools. The revised proposal will have a minimal impact upon this natural feature.
- **View Loss**
Comment:
Concern was raised in regards to loss of water views from private open space from adjoining properties. The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Case of *Tenacity Consulting Pty Ltd v Warringah Council* (2004) NSWLEC 140' in this report (refer to CI. 3.4.3 Maintenance of Views under the MDCP 2013 section of this report). In summary, the proposed development

does not cause unreasonable view loss to and from public and private open spaces.

- **Privacy (visual and acoustic)**

Comment:

Concern was raised about privacy impacts (acoustic and visual) from the two dwellings particularly to outdoor living areas. The proposal has been assessed against the privacy provisions under Clause 3.4.2 of the Manly DCP in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.2 of the Manly DCP, subject to conditions.

- **Boundary Fencing**

Comment:

Concern is raised in regards to impact of the proposed boundary fencing along the western property boundary as shown on the plans. No owners consent has been provided from the adjoining property who shares this boundary. As such, the element of the proposal is conditioned to be deleted prior to the issue of the construction certificate.

- **Swimming Pool**

Comment:

Concern is raised in regards to the proposed amenity impacts as a result of the proposed swimming pools to the rear of the both dwellings. The revised plans have deleted the swimming pool from both lots to ensure the rock outcrop is retained to the rear of the property.

- **Built form non-compliance**

Comment:

Concern is raised in regards to the proposed rear setback and number of storeys non-compliance and the resulting undesirable presentation to the streetscape as well as amenity impacts to adjoining properties. A detailed assessment of the non-compliance under clause 4.1.4 Setbacks (front, side and rear) of the Manly DCP is in this report and clause 4.1.2 height of buildings. In summary, the variation to the rear setback and number of storeys control is supported.

- **Stormwater**

Comment:

The application was referred to Council's Development Engineers for comment in regards to stormwater management. Suitable conditions have been imposed as part of this recommendation to ensure adequate stormwater management for the two dwellings and adjoining properties.

- **Biodiversity**

Comment:

Concern is raised in regards to the potential impact of the development on threatened species including the long nose Bandicoot. The subject site is not as an identified area of significance for any threatened species. As such, additional information to address concerns surrounding biodiversity is not required.

- **Aboriginal Heritage**

Comment:

Concern was raised in regards to the potential impact on aboriginal heritage as a result of the proposed works. The application was referred to the Aboriginal Heritage Officer for comment. Following a site visit, the Aboriginal Heritage Officer provided recommendations to be considered during construction. A condition of consent has been imposed to ensure that the recommendations provided are enforced if the application is to be approved.

- **Heritage**

Comment:

Concern is raised in regards to the potential heritage value of the existing dwelling house.

The existing dwelling house is not a noted heritage item under the Manly LEP and it is not located in a heritage conservation area. Therefore, the proposed demolition is considered satisfactory.

- **Construction impacts**

Comment:

Significant development of any site will undoubtedly cause disruption to adjoining properties. In order to reduce the potential disruption, standard conditions have been included as part of the recommendation to ensure compliance with the relevant Australia standards and to allow for respite for neighbouring properties by imposing set operation/construction hours.

- **Loss of property value**

Comment:

Concern is raised that the development would have an adverse impact on property value. The issue of property value is not one which can be considered under the provisions of Section 4.15 (1) of the Environmental planning and Assessment Act 1979. This issue does not warrant the refusal of the application.

- **Excavation Impacts**

Comment

Concern was raised in regards to potential impacts from excavation works including vibration, soil stability and waste disposal. These matters have been considered under Clause 4.4.5 of the Manly DCP- Earthworks (Excavation and Filling). In summary, the proposal is consistent with the relevant underlying objectives, subject to conditions.

Further, the recommendations proposed under the Geotechnical report (prepared by Geotechnics dated 4 March 2021) are imposed as part of this report/recommendation. The report considers issues related to the proposed excavation during and post construction.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i></p>
Landscape Officer	This application is for the demolition of an existing residential dwelling,

Internal Referral Body	Comments
	<p>and the construction of a dual occupancy development as a result of subdividing the existing site.</p> <p>Councils Landscape Referral section has considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls:</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees and Bushland Vegetation • 3.3.3 Footpath Tree Planting • 4.1.5 Open Space and Landscaping • 4.4.5 Earthworks (Excavation and Filling) • 4.4.8 Subdivision <p>A Landscape Plan has been provided with the application and the works include in-ground planting of trees, shrubs, grasses and groundcovers, as well as on-slab planting of shrubs and groundcovers.</p> <p>The Statement of Environmental Effects provided with the application notes that no existing trees within the site are to be removed. As indicated on the Site Survey and Architectural Plans, there are currently no trees located within the site boundaries, however substantial planting comprised of trees and shrubs is located on the northern boundary on the White Street frontage. All vegetation within this frontage has been noted as retained. The retention of this vegetation is vital in satisfying control 3.3.2.</p> <p>Currently, the site has a large existing rock outcrop at the rear of the property. Control 4.4.5 requires earthworks be limited to protect significant natural features of the site including prominent rock outcrops, and control 4.4.8 requires new subdivisions must have regard to existing natural features which is inclusive of rock outcrops. The proposal, as indicated on the Architectural and Landscape Plans, designates majority of this rock outcrop for removal. The removal of this rock has been assessed on merit, and due to the outcrop not being visible from the street, it is acceptable subject to the following:</p> <ul style="list-style-type: none"> i) natural ground must be maintained within 0.9m of rear boundaries, ii) the exposed rock face shall remain visible and be preserved, and shall not be subject to any additional cladding or treatment. <p>The landscape component of the proposal is therefore acceptable subject to the protection of existing vegetation, preservation of the exposed rock face as a result of earthworks, and the completion of landscape works as proposed on the Landscape Plans.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following condition of consent.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the

External Referral Body	Comments
	relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area of works has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Whilst the area of works does not contain Aboriginal sites or Aboriginal heritage sensitivity other portions of the DA area do. There is a large sandstone overhang on the property. According to the Due Diligence Code of Practice, any land within 20m of or in a rock shelter is considered to have Aboriginal heritage sensitivity and the potential to contain Aboriginal sites. Given the presence of these landscape features in the proposal area there is potential that the works may harm unrecorded Aboriginal sites which are protected under the NPW Act 1974. Harm to these landscape features should therefore be avoided during the construction phase of the works.</p> <p>Inadvertent impacts is considered harm under the NPW Act (1974). Storing materials, parking vehicles on an Aboriginal site or area likely to contain Aboriginal sites is considered harm. During construction all workers and contractors should be made aware of their obligations to avoid harm to Aboriginal sites and areas of Aboriginal sensitivity.</p> <p>If inadvertent impacts do occur works, works should cease and Council, the Department of Planning, Industry and Environment (DPIE) and the Metropolitan Local Aboriginal Land Council should be contacted</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated.

Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 11330001M).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	Pass
Energy	50	52

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. Ausgrid have recommended standard conditions of consent for this development.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP.

Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	300m ²	Lot 1: 318.8m ²	-	Yes
		Lot 2: 318.8m ²	-	Yes
Height of Buildings:	8.5m	Lot 1: 8.1m	-	Yes
		Lot 2: 8.4m	-	Yes
Floor Space Ratio	FSR: 0.5:1 (Lot 1- 159.4m ²)	Lot 1:155.73sqm	-	Yes
	FSR: 0.5:1 (Lot 2- 159.4m ²)	Lot 2:156.08sqm	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
2.7 Demolition requires development consent	Yes
4.1 Minimum subdivision lot size	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

6.2 Earthworks

The proposal includes significant cut and fill works across the property as a result of the natural topography of the site. The proposed earthworks will not unreasonably impact the natural processes or future development of the site, or the amenity of adjoining properties. Further, the works will not have a unreasonable impact upon natural outcrop to the rear of the property.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 531m²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 300sqm per dwelling	318.8sqm	-	Yes
	Dwelling Size: 117sqm	>117sqm	-	Yes
4.1.2.1 Wall Height	North: 8m (based on gradient >1:4)	8m	-	Yes
	South: 8m (based on gradient >1:4)	7.9m	-	Yes
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	2.5m	0.6m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	6m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.63m (based on house 1 northern wall height) Secondary street frontages of corner allotments, the side boundary setback control will apply.	Ground floor- 2.5m - 3.2m First Floor - 3.2m	-	Yes
	2.66m (based on house 2 southern wall height)	Ground floor - 2.5m First Floor - 3.2m	-	Yes
	Windows: 3m	2.5m - 3.2m	16.6%	No
4.1.4.4 Rear Setbacks	8m	House (Lot) 1 Deck - 6.5m Rear Wall - 9.5m	18.75%	No
		House (Lot) 2 Deck - 3.7m Rear wall - 8m	53%	
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Lot 1- Open space 55% (175.34sqm) site area	50.2% (160.3sqm)	8.8%	No
	Lot 2- Open space 55% (175.34sqm) of site area	42.4% (135.3sqm)	23%	No
	Lot 1- Open space above ground 25% (40m ²) of total open space	41.54% (66.6m ²)	66%	No
	Lot 2- Open space above ground 25% (33.83m ²) of total open space	60% (81.8m ²)	100%	No
4.1.5.2 Landscaped Area	Lot 1- Landscaped area 35% (56.10m ²) of open space	58% (93.8m ²)	-	Yes
	Lot 2- Landscaped area 35% (47.35m ²) of open space	39.68% (53.7m ²)	-	Yes
	3 native trees	0 trees	100%	No
4.1.5.3 Private Open Space	18sqm per dwelling	Lot 1 - >18sqm	-	Yes
		Lot 2 - >18sqm	-	Yes
4.1.6.1 Parking Design	Maximum 50% of frontage up to	6.1m (60%)	20%	No

and the Location of Garages, Carports or Hardstand Areas	maximum 6.2m			
4.1.10 Fencing	1m or 1.5m with 30% transparency	2m	25%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	Lot 1- 2 spaces	-	Yes
		Lot 2- 2 spaces	-	Yes

***Note:** See comments related to non-compliance's under detailed assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	No	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Description of non-compliance

Clause 4.1.10 of the Manly DCP requires front fences be a maximum height of 1m or 1.5m with 30 percent transparency.

The proposed front fence has a maximum height of 2m, non-compliant with the relevant control.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:

The proposed development will have an unreasonable visual impact upon the streetscape. The proposed height of the front fence across both lots is inconsistent with neighbouring development within the street and inconsistent with the desired character of the area. A condition of consent has been included in this report to mitigate the visual impact of this development. The condition is as follows:

The maximum fence height is not to exceed 1.5m from ground level on the street side of the fence.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain consistency within the streetscape.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Comment:

Subject to condition of consent included above, the proposal will complement the identified streetscape.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment:

Sufficient planting is provided in the front setback to offset the visual impact of the front fence.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.1 Sunlight Access and Overshadowing

Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

Objective 1) To provide equitable access to light and sunshine.

Comment:

The proposal will result in additional overshadowing of the neighbouring property to the south No. 23 Nield Avenue, Balgowlah.

No. 23 Nield Avenue is located on the southern side of the subject site. The properties along the western side of Nield Avenue slope from north to south, and as a result this property is susceptible to significant overshadowing. To overcome this the overall height of the development has been minimised and the bulk of the development has been pushed to the west. Further compliance with the Manly DCP 2013 built form controls is not likely to result in any significant increase in sunlight access to this Neighbouring property The neighbouring property will maintain solar access to the private open spaces during late morning, mid-day during the winter solstice. The proposal has been suitably designed to maintain adequate access to light and sunshine within the locality.

The proposal is suitably designed to ensure equitable access to light and sunshine within the locality.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:

The overall building height, wall heights and setbacks of the proposal with regard to the southern boundary are compliant with the numerical controls prescribed by MLEP and MDCP. The setback of the southern facade is increased at the upper floor, and exceeds the minimum setbacks prescribed. Furthermore, the facade is well articulated and roof heights have been minimised to reduce overshadowing of adjoining properties. Concern has been raised with regard to non-compliance with the rear setback control and the associated overshadowing arising from the portion of the proposal within this area. However, the setbacks of the proposal have been considered on merit, and the overshadowing impact associated with the portion of the development within the 8m of the site is not unreasonable.

Overall, the proposal is considered to maintain adequate access to light and sunshine.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The proposal provides a large southern side setback and is suitably designed to maximise the penetration of sunlight to the windows, living rooms and principal outdoor areas.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.2 Privacy and Security

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

Windows

The provisions of this development control prescribe that windows are to use narrow, translucent or obscured glass windows to maximise privacy where necessary and when located close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy. Windows FG1.08 and FG1.07 off bedroom 2 and FG1.11 off the first floor living room appear to be located directly opposite the private open space of the adjoining property to the south (No. 23 Nield Avenue). To mitigate visual privacy impacts, it is recommended a condition be imposed for the windows to be fitted with obscured glazing or be high sill (1.65m above the finished floor level) so as to deflect viewing from the private open space of the adjoining property. All other windows along the southern, eastern, western and northern elevations of the dwelling are appropriately offset, spatially separated, or incorporate raised sill heights or obscured glazing to prevent overlooking between adjoining dwellings.

Deck/Balcony

The decking to the rear of the both dwellings is non-compliance with the 8m rear setback control of the Manly DCP. However, the deck to the rear of both dwelling when utilised by the occupants will not have a direct view of the private open space of adjoining properties to the north. Privacy screening along the southern side of the balcony and deck at first floor level is sufficient to mitigate visual privacy impacts. Given the dense urban environment of the area, it is considered that it is an unreasonable expectation that complete privacy can be maintained between dwellings. The proposed deck/balconies to the rear and front of the site are considered acceptable on merit and consistent with the objectives of the clause in this particular instance.

Pool

The element of the proposal has been removed in the revised architectural plans.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

Subject to the above conditions, the proposal will achieve this objective.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal provides appropriate openings so as to encourage awareness of neighbourhood security.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.3 Maintenance of Views

As a result of the public exhibition of the development application Council received two (2) submissions raised view loss as a concern. Submission were from the neighbouring properties at 46A and 46B West Street, Balgowlah.

To assist Council in its assessment of the application, on 12 February 2021 a request was made for the Applicant to erect height poles.

The Applicant subsequently erected height poles with certification of the height and location of the poles provided by a Registered Surveyor on 25 February 2021. (Refer to plan prepared by ECP Surveyors dated 23 February 2021).

The location of the height poles (amended) is shown below:

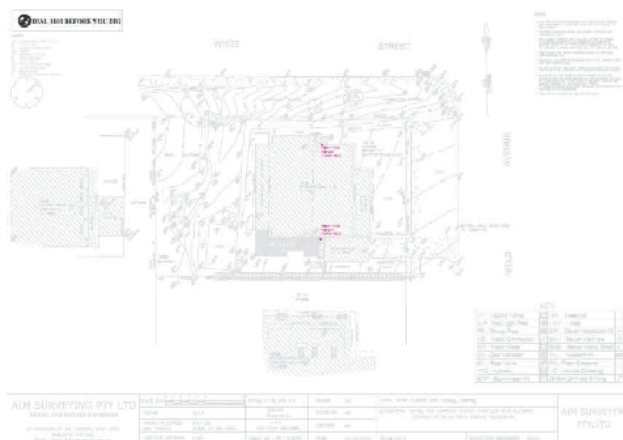


Image 1- Survey confirmation of height poles

Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

The proposed development will result in a negligible loss of view from neighbouring properties to North Harbour. The loss of view is not unreasonable and will maintain adequate view sharing between properties.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Comment:

The proposal results in a disruption of views from neighbouring properties. The level of view loss is not unreasonable and has been assessed below with regard to the planning principle established by the NSW Land and Environment Court.

Council received two (2) submissions from neighbouring properties in relation to view loss from the original and amended plans submitted. The Manly DCP refers to the planning principal within *Tenacity Consulting v Warringah* [2004] NSWLEC 140 when considering the impacts on the views of the adjoining properties. This is provided below:

Note: The pictures provided below include the height poles referred to above for ease of reference.

1. Nature of the view affected

"The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured."

Comment to Principle 1:

No. 46B West Street, Balgowlah

The nature of the view affected from this property would harbour (water) views to the east. The views would be filtered through existing development and vegetation as pictured below. A large portion of the existing views are to the side and over the top of the subject site dwelling house (No. 25 Nield Avenue).



Photo 1- Ground floor Deck - Sitting



Photo 2 - Ground floor living room - Standing



Photo 3 - First floor balcony - Standing

No. 46A West Street, Balgowlah

The nature of the view affected from this property would harbour (water) views to the east. The views would be filtered through existing development and vegetation as pictured below. A large portion of the existing views are to the side and over the top of the subject site dwelling house (No. 25 Nield Avenue).



Photo 4- Ground floor balcony - Standing



Photo 5 - First floor balcony - Standing

2. What part of the affected property are the views obtained.

"The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic."

Comment to Principle 2:

Note: Views obtained from the sitting position are of a lesser quality than those obtained in the standing position.

No. 46B West Street, Balgowlah

The views affected from this property are obtained over the rear boundary of the site over the top of the existing dwelling house. Views are obtained from a standing and sitting position in the living room and private open space.

No. 46A West Street, Balgowlah

The views affected from this property are obtained over the rear boundary of the site over the top of the existing dwelling house. Views are obtained from a standing and sitting position in the living room and private open space.

3. Extent of Impact

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".

Comment to Principle 3:**No. 46B West Street, Balgowlah**

No. 46B West Street, Balgowlah currently have substantial views to the Harbour. Views are taken from the living rooms and private open space to the rear of the site at ground level and the bedroom and balcony at first floor level. In regards to the living rooms of this dwelling all water views will be retained. Views from the first floor bedrooms and balcony will also be retained. The occupants will continue to enjoy harbour views from this property. Qualitatively and considering the existing provision of views available from No. 46B West Street, the overall extent of view loss proposed is negligible.

No. 46A West Street, Balgowlah

No. 46A West Street, Balgowlah currently have substantial views to the Harbour. Similarly to 46B, the views from this property are taken from the living rooms and private open space to the rear of the site at ground level and the bedroom and balcony at first floor level. The primary views from the ground floor and first floor will be retained in full. The impact is negligible.

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment:

In considering the totality of impact it is noted that the proposal is compliant with the Height of Building and Floor Space Ratio development standard.

The proposal responds appropriately to the available views through the provisions of appropriate view corridors over the top of the proposed semi-detached dwellings. Together with a design which incorporates substantial building articulation into the proposal, the proposal ensures highly valued views are retained from all affected properties, with the overall impact of the proposal on neighbouring properties in terms of view loss being negligible.

Given the above, it is considered that the proposal is acceptable and viewing sharing is achieved.

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

Comment:

The proposed works will not cause unreasonable loss of view. In regards to 'view creep' the proposal does not include unreasonable bulk which could lead to unreasonable future view loss.

Conclusion

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Description of non-compliance

Clause 4.1.2 of the MDCP 2013 limits building to 2 storeys in height. The proposal is 3 storeys in height, which does not satisfy this requirement. The 3 storey component occurs at the front of the structure over the footprint of the garage, with the rear half of the structure being a 2 storey building.

Merit consideration

With regard to the consideration for a variation, the proposed development is considered against the underlying objectives of the control. This control relies upon the objectives specified within Clause 4.3 of the MLEP 2013. Accordingly, the proposal is considered against the following objectives:

(1) (a) To provide for building heights and roof forms that are consistent with the topographic landscape, prevailing height and desired future streetscape character in the locality.

Comment:

The proposal complies with the Height of buildings development standard and therefore, meets the desired building height envisaged for the site. The semi-detached dwellings follow the slope of the land.

(1) (b) To control the bulk and scale of buildings.

Comment:

The proposal complies with the Height of buildings and Floor space ratio development standards, which are the key controls that govern the bulk and scale of buildings. The proposed development

incorporates various building materials and is well articulated, which further minimises visual bulk. Overall, the resulting built form is considered to be appropriate in the context of the site.

(1) (c) To minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including harbour and foreshores).*

Comment:

The proposal has been assessed against the view loss provisions under Section 3.4.3- Maintenance of Views of the Manly DCP and *Tenacity Consulting v Warringah* [2004] NSWLEC 140 when considering the impacts on the views of adjoining properties in this report. In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

(1) (d) To provide solar access to public and private open space and maintain adequate sunlight access to private open spaces and to habitable rooms of adjoining dwellings.

Comment:

The solar impacts of this aspect of the development are acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

(1) (e) To ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The subject site is not located within a recreation or environmental protection zone, nor does the site adjoin a recreation or environmental protection zone.

Having regard to the above assessment, it is concluded that the applicable objectives of the control have been achieved. Therefore, the application is supported on merit in this particular circumstance.

4.1.4 Setbacks (front, side and rear) and Building Separation

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires windows be setback at least 3m from the side boundary.

Clause 4.1.4.4 of the Manly DCP requires development be setback at least 8m from the rear boundary.

The development proposes the following:

Windows - 2.5m - 3.2m (16.6% variation to the numeric control).

Rear Setback (Lot 1) - 6.5m (deck) (18.75% variation to the numeric control).

Rear Setback (lot 2) - 3.5m (deck) (53% variation to the numeric control).

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposal has maintained the existing landscape setting and setback to the streetscape, including the desired spatial residential proportions of the street, the street edge and the landscape character frontage to Nield Avenue. The proposal is consistent with maintaining local amenity by the design response to ensure no unreasonable impact on privacy (subject to conditions) and providing equitable access to natural light, direct sunlight and air circulation for the proposed dwellings and the surrounding environment.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposed development allows for adequate visual and acoustic privacy to be retained between the subject site and neighbouring properties. In regards to sunlight access, the proposed development is consistent with Clause 3.4.1 of the Manly DCP. The proposed development will ensure views of the harbour will be retained from surrounding properties. There is no significant impact on the streetscape, subject to conditions.

Objective 3) To promote flexibility in the siting of buildings.

Comment:

Flexibility is provided in this circumstance as the proposed dwellings will not result in any unreasonable impacts upon adjoining properties.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

Suitable landscaping is provided across the site. Subject to conditions imposed by Council's Landscape

Architect the proposal complies with this clause.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

The subject site is not located in bush fire prone land.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires at least 55% (175.34sqm) of the site area be total open space for Lot 1. The proposed total open space for Lot 1 is 50.2% (160.3sqm), non-compliant with the numeric control. This represents a 8.8% variation to the numeric control. Clause 4.1.5.2 of the Manly DCP requires at least 55% (175.34sqm) of the site area be total open space for Lot 2. The proposed total open space for Lot 2 is 42.4% (135.3m²), non-compliant with the numeric control. This represents a 23% variation to the numeric control.

Clause 4.1.5.2 of the Manly DCP requires total open space above ground be no more than 25% of total open space for Lot 2. The proposed total open space above ground for lot 1 is equal 41.54% (66.6m²), non-compliant with the numeric control. This represents a 66% variation to the numeric control. Clause 4.1.5.2 of the Manly DCP requires total open space above ground be no more than 25% of total open space for Lot 2. The proposed total open space above ground for lot 2 is equal 60% (81.8m²), non-compliant with the numeric control. This represents a 100% variation to the numeric control.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

Subject to conditions imposed by Council's Landscape Architect and recommendation proposed within the arboricultural report the proposal will ensure significant landscaping and vegetation across both lots of the subject site.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

Both new lots for the proposed works propose a suitable level of landscaped open space, compliant with the landscaped open space control under Clause 4.1.5.2 of the Manly DCP.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

Amenity considerations including sunlight access, privacy and views have all been considered as part of this application, with no unreasonable impacts upon the subject site or neighbouring properties. The established streetscape character is not likely to be impacted by the proposed works.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

Significant levels of deep soil areas are proposed around the site to ensure no unreasonable stormwater runoff, subject to conditions.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposed planting on site is suitable for the site, so as not to contribute to the spread of weeds and the degradation of nearby public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The proposed development does not compromise any wildlife habitats or potential wildlife corridors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Description of non-compliance

Clause 4.1.6.1 of the Manly DCP requires that the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.

The proposed garage on both lots is equal to 6.1m (60%), non-compliant with the numeric control. This results in a 64% variation to the numeric control.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

Each of the two lots will have the required 2 spaces per dwelling.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

Adequate on-site parking is provided, consistent with the numeric control.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposed parking spaces for each dwelling are setback adequately setback from the street, consistent with the 6m front setback control. Sufficient area is provided to allow for all vehicles to exit the site in a forward direction.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

Subject to conditions of consent, imposed by Council's Development Engineer, the proposal is consistent with this control.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

The two lots will use a single driveway and cross over to reduce the disruption to the existing footpaths.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The use of a single vehicular entrance reduces the loss of natural landscape features on site and the road reserve.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

The subject site is not located within a established town centre noted within the Manly DCP.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.8 Development on Sloping Sites

A geotechnical report has been submitted with the amended plans, assessing the potential impact of the topography of the site and the proposed excavation and fill. The proposed development responds appropriately to the slope of the site, stepping down at each level to reduce the visual bulk and scale of the proposal. The recommendations included as part of geotechnical report have been included as part of the final conditions of consent.

4.1.10 Fencing

This clause relies upon the objectives of clause 3.1 under Manly DCP 2013. An assessment of the proposal against the objectives under clause 3.1 has been provided within this report. The assessment found the proposal to be consistent with the objectives of clause 3.1, subject to conditions.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$8,943 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$894,300.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any

unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

The proposal seeks consent consent for demolition works, subdivision of one lot into two and the construction of two semi-detached dwelling houses.

When assessed against the MLEP 2013 and MDCP 2013 objectives, the proposed development is considered to align with the relevant aims and requirements of these policies, noting that the environmental and amenity impacts resulting from the development are acceptable.

The development is sympathetic of the character of the site and will maintain an appropriate visual relationship with the surrounding environment.

Therefore, the application is recommended for approval.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/1228 for Demolition works and construction of two semi-detached dwellings including swimming pools and Torrens title subdivision on land at Lot 16 DP 6363, 25 Nield Avenue, BALGOWLAH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A0301/ Revision F	22 February 2021	ADS
A0401/ Revision H	22 February 2021	ADS
A0402/ Revision F	22 February 2021	ADS
A0601/ Revision E	22 February 2021	ADS
A1001/ Revision L	22 February 2021	ADS
A1002/ Revision K	22 February 2021	ADS
A1003/ Revision K	22 February 2021	ADS
A1004/ Revision K	22 February 2021	ADS
A1501/ Revision I	22 February 2021	ADS
A1502/ Revision I	22 February 2021	ADS
A1503/ Revision I	22 February 2021	ADS
A1504/ Revision I	22 February 2021	ADS
A1505/ Revision F	22 February 2021	ADS
A1601/ Revision J	22 February 2021	ADS
A1602/ Revision E	22 February 2021	ADS
A1603/ Revision E	22 February 2021	ADS

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1133001M	16 September 2020	Eco Certificates PTY LTD
Geotechnical Stability Assessment	4 March 2021	Geotechnics

c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

d) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	16 September 2020	Pavlo Doroch

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	N/A

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,

- (ii) in the case of work to be done by an owner-builder:
- A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

4. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until

the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$8,943.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$894,300.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater

Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

6. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

7. **On slab landscape works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:
ii) 600mm for shrubs

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: to ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

8. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- Windows FG1.08, FG1.07 and FG1.11 are to have a sill height of at least 1.65m above finished floor level, or be fixed and frosted below 1.65m.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

9. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

10. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY, and generally in accordance with the concept drainage plans prepared by Australian Consulting Engineers, Project number 200548, dated 04/09/2020.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

11. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

12. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

13. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

14. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

15. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

16. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

17. **Boundary Fencing**

No approval is given for the proposed boundary fence. No consent has been provided by the owners of the common boundary.

Reason: To ensure compliance with the Dividing Fences Act 1991

18. **Front Fence**

The maximum fence height is not to exceed 1.5m from ground level on the street side of the fence.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain consistency within the streetscape.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

20. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out

satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: tree protection.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

22. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

23. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

24. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

25. **Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To maintain the existing profile of the nature strip/road reserve.

26. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 6 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/2 NH and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

27. **Tree and vegetation protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation not approved for removal.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees

within 5 metres of development,

- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: tree and vegetation protection.

28. Protection of existing street trees

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

As a minimum the tree protection fencing for the street tree fronting the development site shall

consist of standard 2.4m panel length to four sides, located to allow for unrestricted and safe pedestrian access upon the road verge.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: tree protection.

29. **Protection of rock and sites of significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: preservation of significant environmental features.

30. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE**

31. **Landscape completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:

- i) natural ground to be maintained within 0.9m of rear boundaries
- ii) exposed rock face must remain visible and be preserved, and shall not be subject to any additional cladding or treatments

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: environmental amenity.

32. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved

drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of final Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

33. Street tree planting

Street trees shall be planted in accordance with the following:

- i) 1x *Callistemon viminalis*, located within the road reserve at the south east corner of the site

All street trees shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees.

All street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, including a four post and top and mid rail timber tree guard, and watered until established, and shall be located at least 2.0 metres from any structures including driveways, kerbs, and paths, and shall generally be centralised within the road verge.

Reason: to maintain environmental amenity.

34. Condition of retained vegetation - Project Arborist

Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: tree protection.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

35. Landscape maintenance

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of

planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

For all new on slab landscape works, establish an on-going landscape maintenance plan that shall be submitted to the Certifying Authority that aims to monitor and replenish soil levels annually as a result of soil shrinkage over time.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: to maintain local environmental amenity.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE

36. Provision of Services for Subdivision

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

37. Sydney Water Compliance Certification

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

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

38. Easement for Drainage

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

39. **Release of Subdivision Certificate**

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

40. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

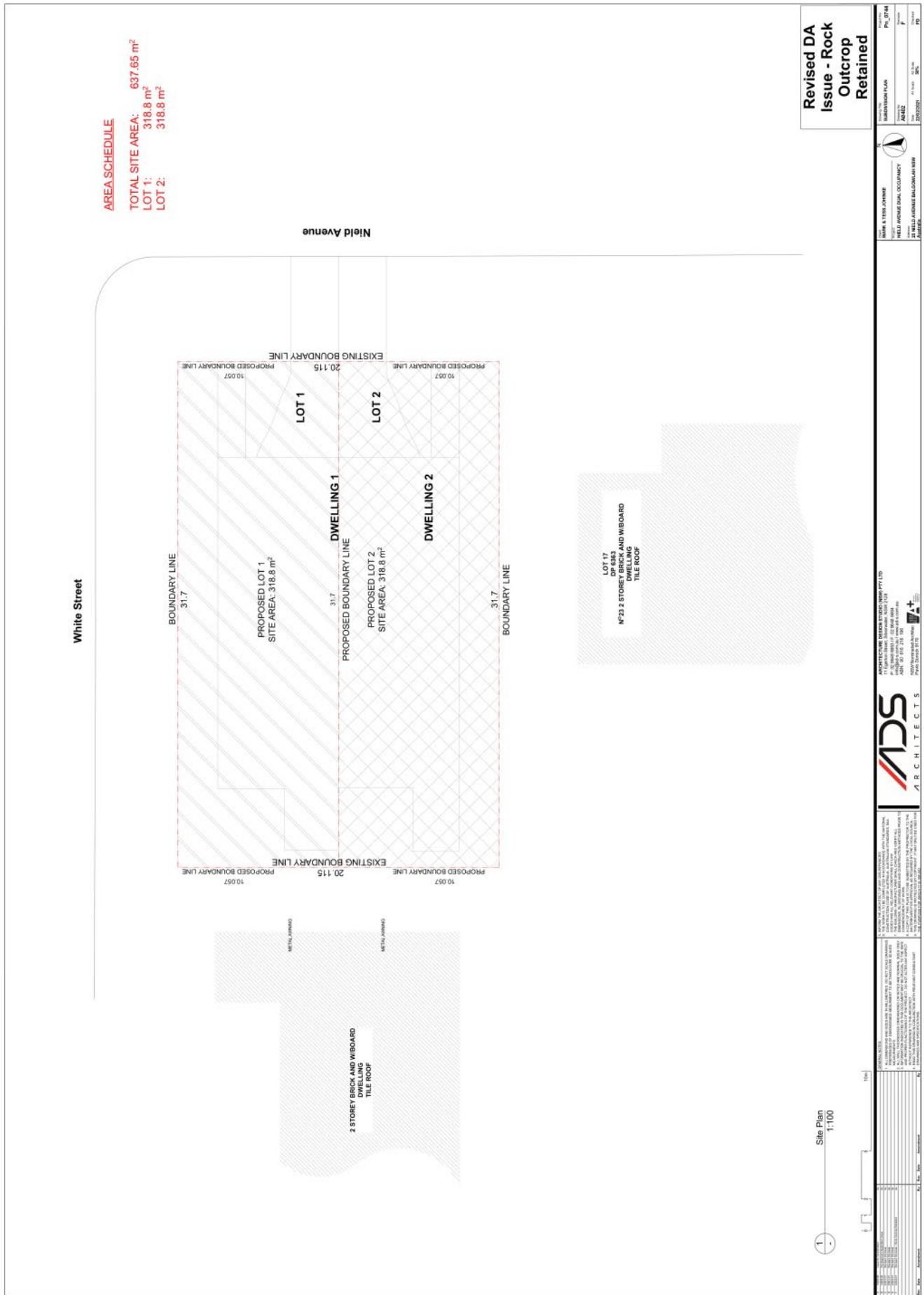
41. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure proper management of land.

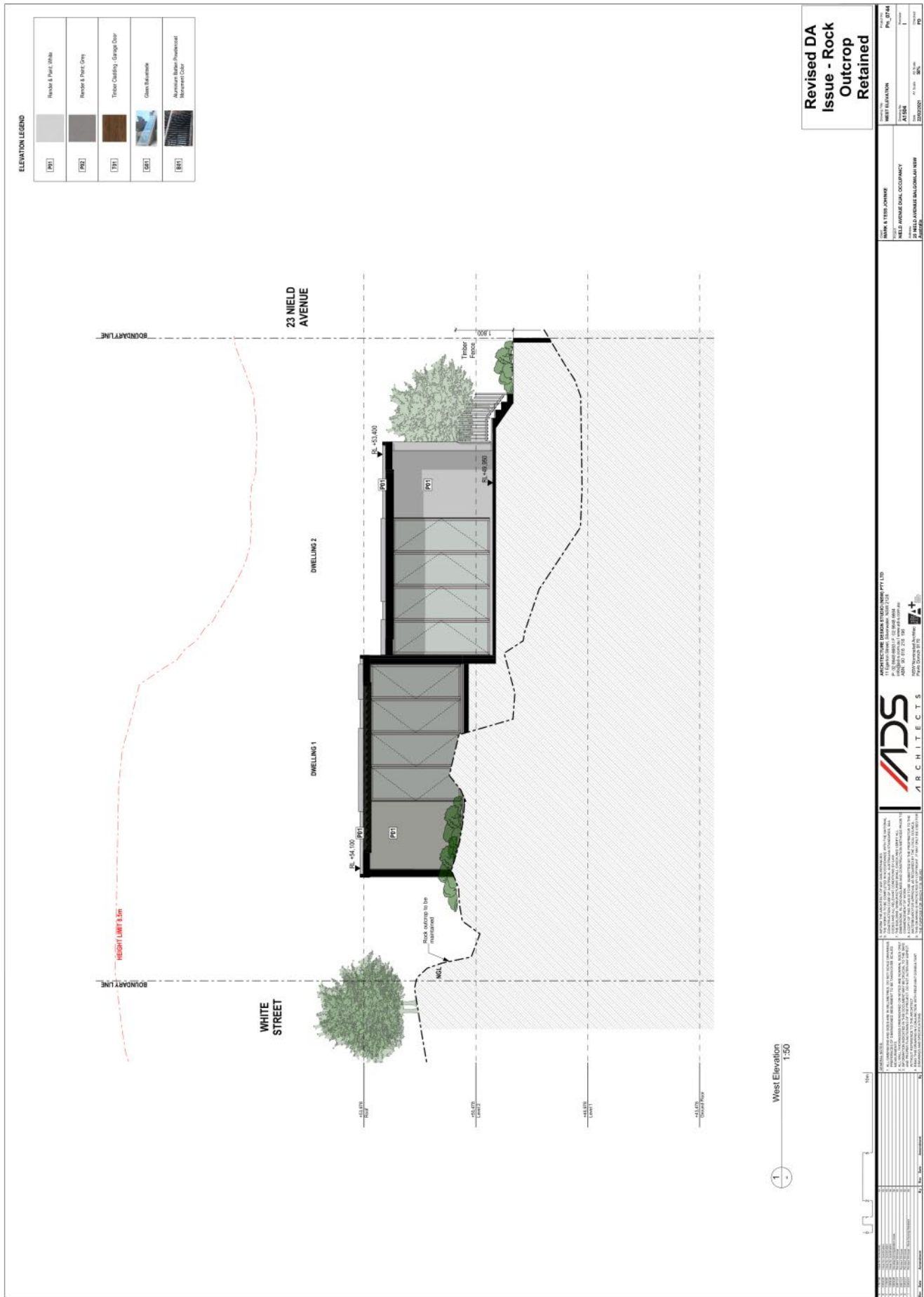
















ITEM 3.2	DA2020/1235 - 888 PITTWATER ROAD, DEE WHY - USE OF PREMISES AS A CAR WASH FACILITY INCLUDING FITOUT
AUTHORISING MANAGER	Anna Williams
TRIM FILE REF	2021/178581
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/1235 for use of premises as a car wash facility including fit out at Lot 2 DP 1241568, 888 Pittwater Road, Dee Why subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1235
Responsible Officer:	Penny Wood
Land to be developed (Address):	Lot 2 DP 1241568, 888 Pittwater Road DEE WHY NSW 2099
Proposed Development:	Use of premises as a car wash facility including fitout
Zoning:	Warringah LEP2011 - Land zoned B4 Mixed Use
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Karimbla Properties (No41) Pty Ltd
Applicant:	Charles Fortin
Application Lodged:	08/10/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	19/10/2020 to 02/11/2020
Advertised:	Not Advertised
Submissions Received:	17
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 80,000.00

Executive Summary

The development proposed is for a car wash within the basement car park level B2 of the subject site. The car wash will use ten (10) existing parking spaces for the use of two (2) drop off zones, two (2) self contained car wash bays and two (2) vacuum / detailing areas. The development also proposes the construction of a small office to serve customers and the construction of a plant room which results in the removal of an existing trolley bay.

The public exhibition period generated a total of seventeen (17) individual submissions. The

submissions raised a number of concerns relating to noise / vibration impacts, traffic / parking, safety of pedestrians, moisture / dampness, use of hazardous chemicals and products, and possible flooding. All concerns have been addressed and considered within the report. An Acoustic Report and Plan of Management were submitted during the assessment process to ensure a detailed assessment of the proposal was undertaken and in response to the number of submissions raising concern with possible noise vibration impacts to the residential component of the development. Both documents were reviewed by Council's Environmental Health Section with no objections raised subject to conditions.

The application is likely to result in significant traffic congestion and pedestrian safety issues, and is recommended for refusal primarily for this reason. The development also proposes to use ten (10) existing parking spaces dedicated to the retail / commercial component of the development. The proposed car wash will further reduce the non-compliant parking space requirement for the retail / commercial component of the development. The provision of off-street carparking was a significant issue during the assessment of the original development application (2016/0705) with an independent Traffic Consultant engaged to review the proposed non-compliant number of parking spaces. The proposed car wash will result in a shortfall of a total of 71 parking spaces for the retail / commercial component which is not acceptable and forms part of the reason for refusal of the development application.

The Traffic Report is considered to provide insufficient information and justification to support the possible concerns around pedestrian safety and congested traffic conditions. The two (2) proposed drop off bays fail to comply with the standard parking bay length resulting in vehicles protruding into the circulation aisle of the car park, partially blocking access for vehicles. This along with the location of the proposed car wash located in close proximity to the access ramp serving B3 and lifts and stairs utilised by pedestrians results in unsafe conditions and is therefore unable to be supported from a traffic perspective.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

Accordingly, the application is referred to the NBLPP with a recommendation for refusal for the reasons detailed within the 'Recommendation' section of this report.

PROPOSED DEVELOPMENT IN DETAIL

The development application proposes the following:

- A car wash located in the south eastern corner of basement B2 car parking level;
- The car wash involves the allocation of ten (10) existing parking spaces;
- Two (2) drop off areas, two (2) fully self-contained wash bays and two (2) vacuum/detailing areas;
- Construction of a new office to be used in conjunction with the use of the car wash on the eastern side of lift shaft and internal staircase. The office will measure 2.15m in height. The

- office proposes a window/counter along the eastern elevation to service customers;
- Construction of plant room along the northern side of lift shaft and internal staircase which will result in the removal of a trolley bay.

Hours of Operation

Monday to Friday: 7.00am - 6.00pm
Saturday and Sunday: 8.00am - 5.00pm

Staff

The application proposes 2 - 3 staff and 6 (six) staff on Saturdays and Sundays.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Assessment - Dee Why Town Centre Contributions Plan 2019
Warringah Development Control Plan - A.5 Objectives
Warringah Development Control Plan - C2 Traffic, Access and Safety
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D3 Noise
Warringah Development Control Plan - D20 Safety and Security

SITE DESCRIPTION

Property Description:	Lot 2 DP 1241568 , 888 Pittwater Road DEE WHY NSW 2099
Detailed Site Description:	The site is irregular in shape and is bound by Howard Avenue to the north, Oaks Avenue to the south and Pittwater Road to the west. The site is further bound by

shared boundaries between itself and several other development sites both to the east and south west.

The site has a total area of 14,466m².

The site is centrally located within the Dee Why Town Centre as defined in the Dee Why Town Centre Master Plan 2013 (DYTC Masterplan).

The existing topography of the site slopes from west to east, with a cross-fall of approximately 4m from the highest point on the south western corner of the Pittwater Road frontage to the lowest point.

The site consists of a Mixed Use Development including retail, commercial and residential uses and a child care centre.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a mix of commercial and residential. The surrounding development consists generally of older style commercial developments, generally two to three storeys in height, with retail uses at ground level and offices and residential development above. Adjoining the site to the north on the opposite side of Howard Avenue, to the west on the opposite side of Pittwater Rd is a mixture of older retail and commercial office buildings and more recently developed shop top housing developments. Land adjoining the site to the east comprises five storey shop-top housing developments, which front Howard Avenue together with a triangle shaped Council reserve and another five (5) storey shop top development further to the rear.

Dee Why Lagoon is located approximately 500m to the north of the subject site and Council's Dee Why office and Library are located on land diagonally opposite the site on the western side of Pittwater Road to the north-west.

Map:



SITE HISTORY

Development Application (DA2016/0705) for the redevelopment of the site as a Mixed use Development was approved by the Sydney Planning Panel on 10 May 2017.

DA2020/0714 was lodged on 29 June 2020 for a car wash in the same location as the current development application. The assessment of the application identified a number of issues including potential noise / vibration concerns and traffic concerns. The noise vibration issues were due to the proposed car wash being located within an enclosed space with hard reflective surfaces. The application was referred to Council's Environmental Health Section for comment and was not supported. An acoustic assessment by a suitably qualified and experienced professional such as an Acoustic Engineer was required in order to undertake a full assessment of the noise impacts. Council's Traffic section raised concern with the reduction in car parking spaces. A Traffic Report was requested demonstrating that the reduced parking supply will still accommodate the demand via a parking study over 1 week.

The application was withdrawn on 13 August 2020 following correspondence from Council on 6 August 2020.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land).

Section 4.15 Matters for Consideration'	Comments
environmental planning instrument	Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential / commercial purposes for an extended period of time. The proposed development retains the mixed use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to an Acoustic Report and a Plan of Management (POM). This information was received on 24 February 2021 and 25 February 2021 respectively.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely	(i) Environmental Impact

Section 4.15 Matters for Consideration'	Comments
impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. The proposal will result in unreasonable impacts to the adjoining and nearby land that cannot be addressed by conditions, specially in regards to traffic and parking and pedestrian safety.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development being a mixed use development, in so far as the proposal represents an inappropriate operation with inadequate parking, pedestrian activity and circulation of vehicles resulting in an unsafe location to support the proposed car wash. These issues re considered to create adverse impacts to the surrounding area.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirements and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/10/2020 to 02/11/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 17 submission/s from:

Name:	Address:
Mrs Linda Hodge	9 Minmai Road MONA VALE NSW 2103

Name:	Address:
Mr Graham Paul Smith	265 / 28 Oaks Avenue DEE WHY NSW 2099
Alper Soylu	563 / 28 Oaks Avenue DEE WHY NSW 2099
Mrs Beverley Fay Cadby	360 / 28 Oaks Avenue DEE WHY NSW 2099
Wyndham Fitzgerald Cramer	257 / 28 Oaks Avenue DEE WHY NSW 2099
Ms Shirley Hedy Taylor	259 / 28 Oaks Avenue DEE WHY NSW 2099
Mrs Adelina Lalic	340 / 17 Howard Avenue DEE WHY NSW 2099
Ms Colleen Catherine Parrett	530 / 17 Howard Avenue DEE WHY NSW 2099
Mr Biao Han	7A Knox Place NORMANHURST NSW 2076
Guner Orucu	475 / 16 Oaks Avenue DEE WHY NSW 2099
Mr Casey Glenn Bruce Aimer	335 / 17 Howard Avenue DEE WHY NSW 2099
Dr Alexandra Claire Elizabeth Beckwith	5 / 69 - 71 Oaks Avenue DEE WHY NSW 2099
Campbell Donald Reade	11 / 104 Oaks Avenue DEE WHY NSW 2099
Mr Sam Drup Jehru	562 / 28 Oaks Avenue DEE WHY NSW 2099
Mr Iain Stephen Ayres	5 / 69 - 71 Oaks Avenue DEE WHY NSW 2099
Karen Blain Lane	358 / 28 Oaks Avenue DEE WHY NSW 2099
Mr Vyacheslav Gorbunov	339 / 17 Howard Avenue DEE WHY NSW 2099

The following issues were raised in the submissions and each have been addressed below:

- Noise/Vibration
- Traffic congestion within car park
- Increase in traffic for the locality
- Moisture / dampness
- Security issues for residents
- Use of hazardous chemicals
- Fire risk
- Increased insurance for residents

The matters raised within the submissions are addressed as follows:

- Noise / Vibration impact for residential properties and the child care centre located within the development.
Comment:
Concern was raised in regard to potential noise and vibration impacts the proposed car wash may generate towards the occupants of both the commercial and residential components of the development. It was noted that an acoustic report was not initially submitted with the development application. The information submitted within the Statement of Environmental Effects did not adequately address potential noise / vibration issues and therefore a letter requesting an acoustic report was sent to the applicant on 10 February 2021. An acoustic report prepared by Acoustic Dynamics dated 24 February 2021 was submitted to Council on 24 February 2021 and was referred to Council's Environmental Health section for comment. On review, no objections were raised by Environmental Health subject to conditions.

- Traffic congestion within car park
Comment:
Concern was raised in the submissions regarding the potential traffic congestion issues and the location of the car wash would have within the basement car park which could in turn lead to queuing and safety issues for vehicles and pedestrians. The application was referred to Council's Traffic Engineer who raised concern with the location of the car wash within Level B2 of the basement car park. The location of the car wash is in close proximity to the ramp serving the B3 parking level which may result in congested conditions at the junction of the ramp and circulation aisle, particularly if vehicles are queuing in the circulation aisle. Concern has also been raised within the submissions regarding pedestrian safety given the car wash's being adjacent to the car park stairs and lift. Council's Traffic Engineer has also raised concern with this issue stating this area is subject to a higher level of pedestrian activity and therefore could lead to unsafe conditions for pedestrians moving to and from the lift and stairs.
- Increase in traffic for the locality
Comment:
The development is not anticipated to impact on the traffic flow of vehicle accessing the car park. The car wash will primarily service patrons of the development who are likely to use the service while utilising the facilities of the development. At capacity the car wash will service four (4) cars.
- Moisture / dampness
Comment:
Concern has been raised regarding potential issues surrounding potential moisture / dampness as a direct result of the use of the car wash. The development proposes two self contained wash bays with grated flooring that is located above a fibreglass tub. The applicant has advised that all waste water will be collected and diverted to an adjacent water treatment system and treated and recycled in accordance with all relevant Australian Standards and Sydney Water requirements. The ventilation provided for the basement car park was addressed in the original development application. It is not anticipated that the use of two wash bays would create substantial moisture to the car park to generate damage to the storage cages located within the B2 level.
- Hazardous chemicals
Comment:
Concern has been raised regarding the use of hazardous chemicals in association with the proposed car wash. The applicant has advised that the cleaning chemicals will be of low risk and environmentally friendly water based detergents.
- Fire Risk
Comment:
Fire safety measures have been implemented into the existing basement car park as part of the original development consent. The application proposes smoke alarms and fire extinguishers within the proposed office and plant room associated with the car wash. This issue would be dealt with at construction certificate stage.
- Security Issues
Comment:
Concern has been raised in the submissions regarding potential security issues resulting in the use of the proposed car wash within the basement level car park. The retail / commercial component of the car park is accessible to the residents, visitors, retail, commercial and child care customers. The mixed use development has a CCTV security system in place and it is

anticipated that the use of a commercial business within the basement car park will provide for additional surveillance of the car park area. The capacity to service a maximum of four (4) cars at one time is not anticipated to create any security issues.

- Increased insurance for residents

Comment:

Concern is raised regarding increased insurance costs for residents of the subject development. This is not a planning matter and is therefore not required to be assessed as part of the subject application.

REFERRALS

Internal Referral Body	Comments
Strategic and Place Planning (S94 Warriewood Valley)	<p>The Application proposes a new car wash facility within the basement of the existing car park at 888 Pittwater Road, Dee Why. This will require the removal of 10 existing shopping centre car parking spaces to be replaced by a proposed car wash bays, office, vacuum/detailing bays and plant room.</p> <p>The Dee Why Town Centre Contribution Plan 2019 applies to this land. The Contributions Plan levies additional non-residential development at a rate of \$16,817.38/100sqm of GFA, or \$168.17/sqm. The proposed car wash will result in a 149.8sqm increase of non-residential GFA.</p> <p>The proposed development is considered acceptable, with conditions of consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential and commercial purposes for since completion of the Dee Why Town Centre development. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the use. The car wash is a retrofitted

hand washing / cleaning operation for cars and contained within a concrete basement carpark. The use of water is limited within the "booth" to contain spills and water / chemicals. Waste water is disposed of to sewer connections / recycling services.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Other Service Infrastructure Authorities

The application was not required to be referred to the Roads and Maritime Service and no other service authority referral issues are raised pursuant to the SEPP.

SEPP (Major Development) 2005

The proposal is situated within an existing major development, however the car wash is lodged as a separate development application within the basement car parking area as a complimentary use to the commercial uses. The proposal is consistent with the aims and objectives of the SEPP.

Consultation Draft SEPP (Competition) 2010

The proposal is consistent with the aims and objectives of the draft SEPP.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

The car wash facility is within an existing basement (underground) carpark and uses retrofitted equipment within the selected car spaces. Therefore, the height control is not applicable to the proposal.

Compliance Assessment

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.3 Flood planning	Yes
Part 7 Dee Why Town Centre	Yes
7.3 Objectives for development within Dee Why Town Centre	Yes
7.6 Height of buildings	Yes
7.12 Provisions promoting retail activity	Yes
7.13 Mobility, traffic management and parking	Yes

Warringah Development Control Plan

Built Form Controls

The car wash facility is within an existing basement (underground) carpark and uses retrofitted equipment within the selected car spaces. Therefore, the built form controls are not applicable to the proposal.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	No	No
C4 Stormwater	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	No	No
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

Detailed Assessment

A.5 Objectives

A detailed assessment of the proposal has found that the proposed car wash is not consistent with the following provisions of the WDCP 2011:

- *Provide a high level of access to and within development.*

Comment:

The proposal fails to demonstrate adequate and safe access within the development. There is lack of detail surrounding the practical access within the development between the levels of the car park given the close proximity to access ramps and the inadequate size of drop off bays leading to unsafe conditions for both pedestrians and vehicles. A level of safe access is required due to the location of the car wash adjacent to the lift and stairs which will intensify the use of the immediate area. The Traffic Report does not sufficiently address these issues and is not supported by Council's Traffic Engineer.

The proposed development is not considered to provide the best outcome for the site in responding the characteristics of the site which is evident in the number of non-compliance's relating to traffic, access and safety and the number of objections raised.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

C2 Traffic, Access and Safety

Description of non-compliance

The Traffic Report submitted does not demonstrate that the location of vehicular access and pedestrian access meets the objectives of this Clause.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To minimise traffic hazards.*

Comment:

The car wash proposes two (2) drop off bays which are located adjacent to the two (2) self contained wash bays. Concern is raised with regard to the size of the drop off bays which appear to measure 4.0m in length. The depth of the drop off bay is less than a standard parking bay length and less than that for a small vehicle parking bay and would result in vehicles parked or entering into these bays, protruding into the circulation aisle. This may result in vehicles impeding egress from the parking bay(s) located on the opposite side of the aisle. It is also noted that the close proximity of the car wash bays in close proximity to the bend in the circulation aisle and in particular the proximity to the ramp serving the B3 parking level may possibly result in traffic congestion at the junction of the ramp and the

circulation aisle. This could intensify traffic congestion in the instance that vehicles are queuing in the circulation aisle.

- *To minimise vehicles queuing on public roads.*

Comment:

Whilst queuing has been raised as potential resulting in congested conditions in the car park. It is unlikely the proposed car wash will create queuing vehicles on public roads.

- *To minimise the number of vehicle crossings in a street.*

Comment:

No change is proposed to the existing entry and exit crossings along Oaks Avenue and Howard Avenue.

Therefore, no further consideration of this objective is relevant to the application.

- *To minimise traffic, pedestrian and cyclist conflict.*

Comment:

Traffic and pedestrian activity surrounding the proposed use within the basement car park has not been detailed adequately or addressed within the Traffic Report. The survey was undertaken covers a relatively short period of the day (11am - 3pm, Saturday 5 September 2020) which does not allow for an adequate timeframe to accurately assess traffic and pedestrian activity within the basement car park. The location of the car wash is also considered problematic given its location adjacent to the car park stairs and the lift. This results in higher pedestrian activity raising concern that the potential queuing and activity generated by the car wash process, inadequate sized drop off bays and close proximity to access ramps will lead to unsafe conditions for pedestrians moving to and from the lift and stairs. The Plan of Management does not address safe pedestrian access for staff who will be required to cross the aisle between the car wash bays and the allocated vacuuming and detailing areas.

- *To minimise interference with public transport facilities.*

Comment:

The proposed use is located within the basement car park and will not impact or interfere with public transport facilities.

- *To minimise the loss of "on street" kerbside parking.*

Comment:

The proposal for a car wash and subsequent loss of ten (10) parking spaces could potentially reduce the parking available for the retail / commercial component of the development. A further reduction to a non-compliant car parking arrangement is not supported.

As a result, the proposal fails to comply with the requirements of this control and will be included as a reason for refusal in the recommendation of this report.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C3 Parking Facilities

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided (Approved DA2016/0705)	Difference (+/-) Approved (DA2016/0705)	Proposed	Difference (+/-)
Retail (including supermarket) Ground Level	6707m ²	409 (6.1 spaces per 100m ² of GLFA)	523 spaces	- 61 spaces	513 spaces	- 71 spaces
Commercial First Level	7026m ²	175 (1 space per 40m ² GFA)				
Child Care Centre	130 kids	32.5 (1 per 4 kids)	24 spaces	- 8.5 spaces	24 spaces (No change)	- 8.5 spaces (No change)
Residential (1 bed)	78	78	488 spaces	+ 37.3 spaces	488 spaces (No change)	488 spaces (No change)
Residential (2 bed)	161	173.2				
Residential (3 bed)	111	109.5				
Residential Visitors	350 Units	70 (1 per 5 units)				
Total		1067.2	1035	- 33 (rounded up)	1025	- 43 (rounded up)

The development is a permitted use within the B4 Mixed Use zone and is proposing to use

ten (10) existing car parking spaces in basement level B2 for the use of a car wash.

The lack of on-site parking is a consequence of the original approval (DA2016/0705) and is considered that any development proposed for the site may not comply.

Council's review of the proposed development indicates that the proposal will create a further non-compliance to the required parking for the commercial / retail component of the development. An assessment of the car parking provisions under the original application was undertaken having regard to the requirements under the Warringah Development Control Plan (WDCP) 2011, the RMS Guide to Traffic Generating Development and the location of the site within the Dee Why Town Centre. This was undertaken by an independent traffic consultant engaged by Council (WSP Parsons Brinckerhoff) with the car parking spaces approved under DA2016/0705 as indicated in the above table.

If car parking was to be provided strictly in accordance with the WDCP 2011, an additional 33 car parking spaces would be required for the retail / commercial component and the proposed child care centre. It was determined in the report carried out by WSP Parsons Brinckerhoff, that 547 car parking spaces for the non-residential component (retail / commercial and child care centre) was adequate to cater for the development. The rate used to determine the appropriate car parking rate for the non-residential uses of the development was based on a Peak Parking Accumulation, which equated to a rate of one car parking space per 23.9m² of commercial / retail space. This specific rate was adopted by the *Dee Why Grand* mixed use development.

The application proposes to utilise ten (10) existing car parking spaces for the proposed car wash, creating an increased non-compliance with the required car parking rate for the site. The proposal will result in a shortfall of 71 spaces required for the commercial / retail component of the development and an overall shortfall of 43 spaces given the proposed surplus of space for the residential component of the development.

The applicant provided a Traffic Report prepared by TTPA (Transport and Traffic Planning Associates) dated 28 September 2020 (Ref: 500/2020) to accompany the proposed car wash. Council did request for any investigation into the occupation of the car wash that the reduced parking supply will still accommodate the demand via a parking study over 1 week. The survey undertaken as part of the Traffic report application does not provide a sufficient period to demonstrate the demand for parking (i.e. that is the study is based on one Saturday being 5 September 2020 between the hours of 11am and 3pm).

Whilst the Traffic Report provided with the application supports the further reduction in parking spaces, the additional shortfall (10 spaces) as a result of the proposed development is not considered to be acceptable as would further impact the extensive work that was undertaken in approving the development for Site B.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

The proposed car wash is located within the basement car park (Level B2) and therefore will not be visible from a public space.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

The proposed car wash is located within the basement car park (Level B2) and therefore will not dominate the street frontage nor will be visible from a public space.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D3 Noise

An Acoustic Report prepared by Acoustic Dynamics dated 24 February 2021 for the proposed car wash was received by Council on 24 February 2021. Council's Environmental Health Officer has reviewed the submitted acoustic report and is satisfied that noise can be mitigated and result in an acceptable outcome for surrounding development, subject to compliance with the recommendations of the report.

D20 Safety and Security

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure that development maintains and enhances the security and safety of the community.*

Comment:

Concern is raised in regard to the safety of the proposed development, in particular pedestrian access to the stairs and lift located adjacent to the car wash bays. Council's Traffic Engineer has also raised concern with the location of the car wash being in close proximity to the ramp serving the B3 parking level which may result in congested conditions at the junction of the ramp and the circulation aisle, possibly resulting in vehicles having to queue. Given the level of pedestrian activity associated within this area of the car park, there is concern that queuing and activity generated by the car wash will lead to unsafe conditions for pedestrians moving to and from the lift and stairs. The Traffic Report submitted with the application does not adequately address the issues surrounding pedestrian activity for the staff employed with the car wash, customers and residents.

In summary, the proposal is not supported by the Council's Traffic Section due to the location of the car wash and insufficient information to address the significant concerns in relation to the safety of the community.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

Dee Why Town Centre Contributions Plan 2019

Commentary and condition provide by Principal Development Infrastructure Officer. See referral section of the report.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

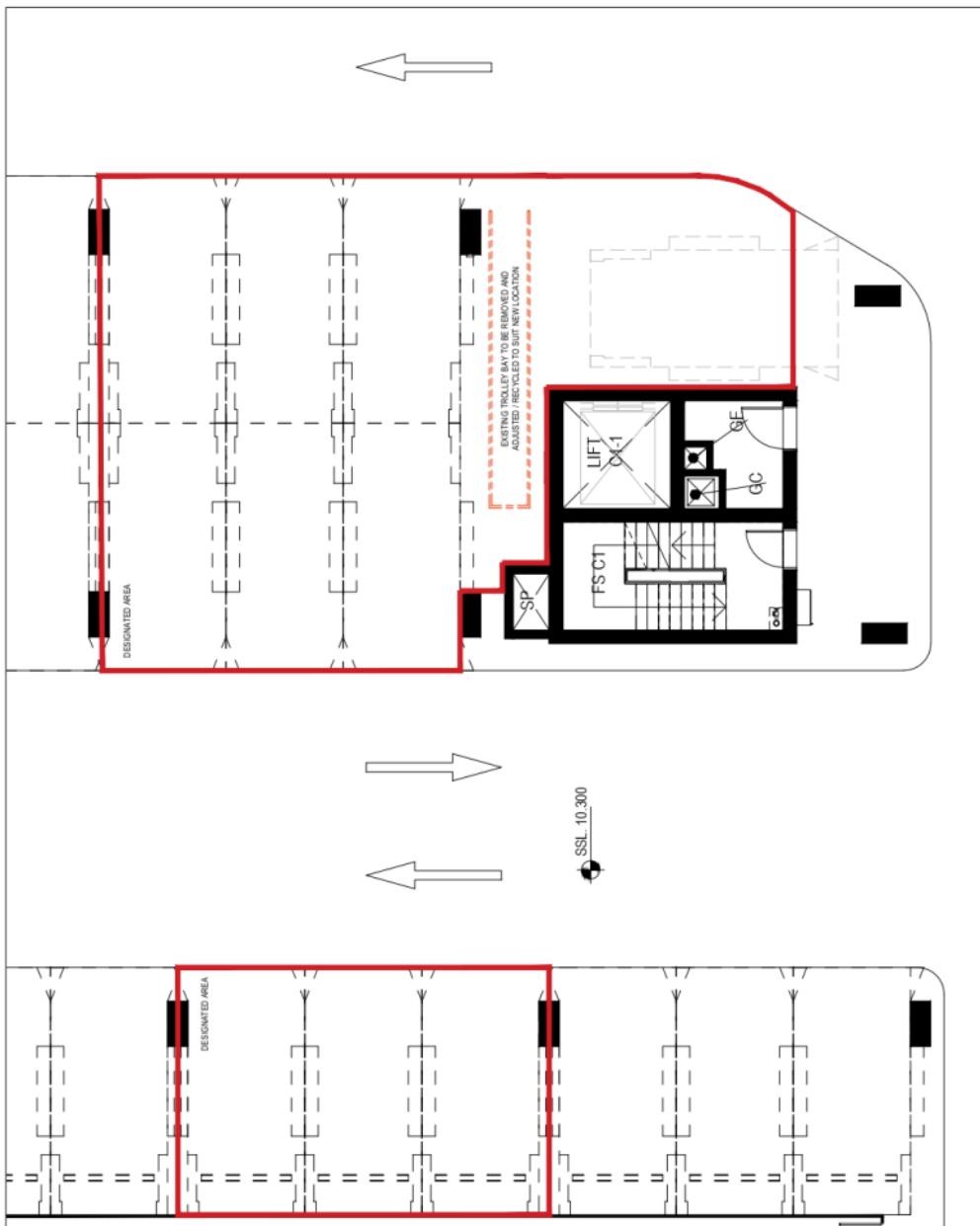
Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposed car wash is not suitable and results in unacceptable pedestrian safety issues, parking and traffic impacts for the area. The Traffic Report submitted with the application has not adequately addressed the potential traffic concerns in regards to pedestrian and vehicle safety. It is considered that the proposed development does not satisfy the appropriate controls and that all

processes and assessments have been satisfactorily addressed.
It is considered that the proposed development does not satisfy the appropriate controls and that all
processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2020/1235 for the Use of premises as a car wash facility including fitout on land at Lot 2 DP 1241568,888 Pittwater Road, DEE WHY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.
2. Pursuant to 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Objectives of the Warringah Development Control Plan 2011.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C2 Traffic, Access and Safety of the Warringah Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C3 Parking Facilities of the Warringah Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D20 Safety and Security of the Warringah Development Control Plan.



EXISTING BASEMENT PLAN - LEVEL P2
SCALE: 1:100



SITE / LOCATION - AERIAL PHOTO
SCALE: NTS



SITE / LOCATION PLAN - BASEMENT LEVEL P2
SCALE: 1:2000

GENERAL NOTES:

- All works to comply with current NCC requirements and Australian Standards.
- Existing fire protection to remain unaltered.
- Existing services, cable trays & ducting to remain unaltered.
- Core hole drilling (if required) to be confirmed by Structural Engineer.
- Trolley bay to be removed and reinstalled as shown on proposed plan.

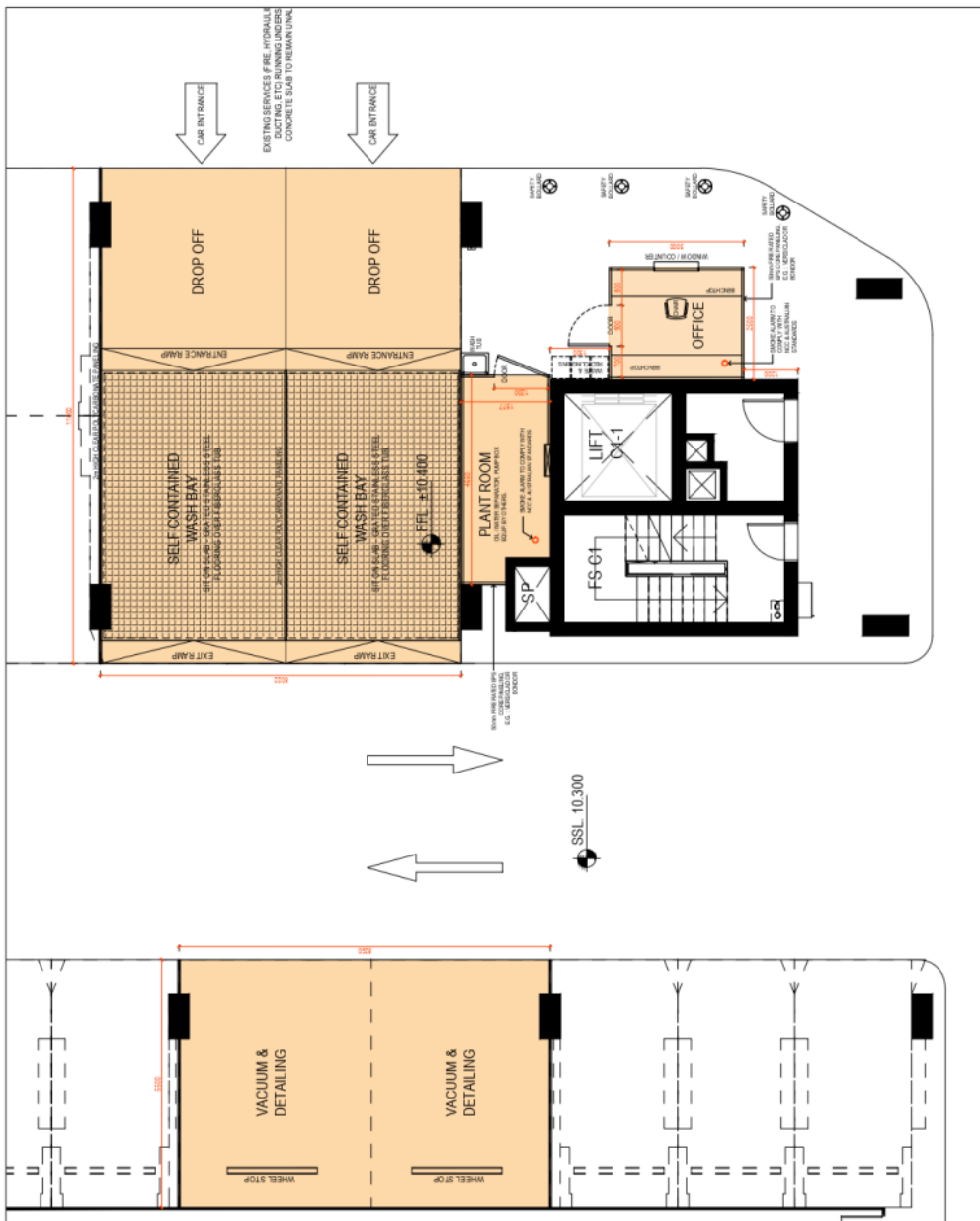


PLEASE NOTE: THIS DOCUMENT IS A PRELIMINARY DESIGN AND NOT TO BE USED FOR CONSTRUCTION. IT IS THE RESPONSIBILITY OF THE CLIENT TO OBTAIN ALL NECESSARY APPROVALS AND PERMITS. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMITS. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMITS. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMITS.

NO.	REVISION	DATE
1	ISSUED FOR TENDER	2020-03-17

CAR WASH BAY PROPOSAL
The Lighthouse - Dee Why

EXISTING PLAN		Project No.
Scale	1:50 @ A3	2020-33
Date	Jun 12, 2020 4:47PM	
Issue	1	A-050



PROPOSED CAR BAY WASH PLAN - LEVEL P2
SCALE: 1:100



SITE / LOCATION PLAN - BASEMENT LEVEL P2
SCALE: 1:2000

SELF CONTAINED WASH BAY DETAILS:

- Drive-thru configuration
- 8m wide x 6m deep Bay
- Clear Wall Paneling
- Grated Flooring
- Fiberglass Tub
- Ramps at Entrance and Exit
- 2 x Wall Mounted Stainless Steel Water Reels (connected to Pressure Washers) within each Bay
- 1 x Wall Mounted Air Reel (connected to air compressor within each Bay)
- Ceiling Mounted Lighting
- 1 x Double GPO Waterproof powerpoints located within each bay

WATER TREATMENT SYSTEM DETAILS:

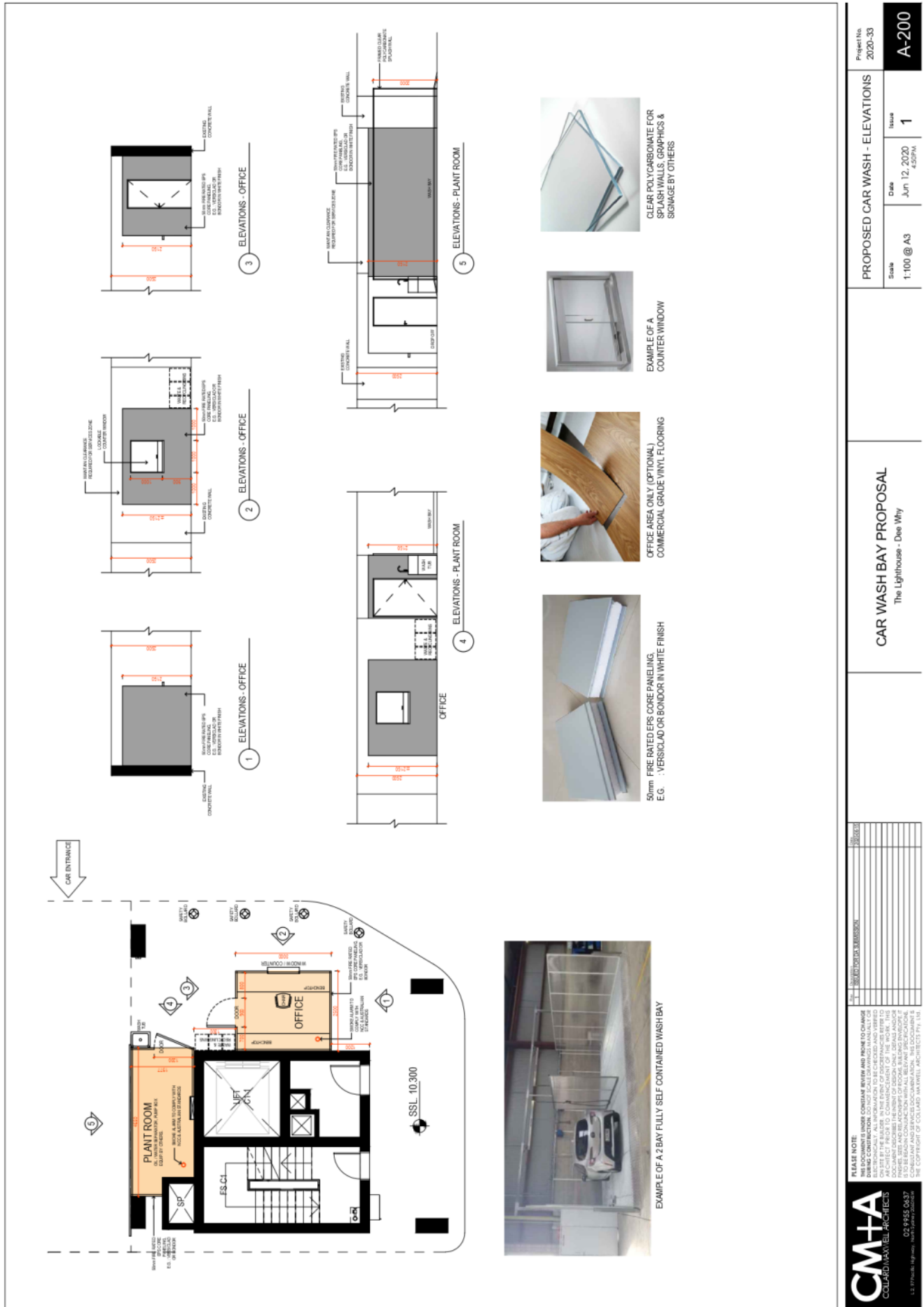
- Supply and install Eclipse Hydroflow HYD1000S oil water separator and connect to wash bay.
- Able to process 1000 litres per hour
- Stainless Steel Construction
- Diaphragm Pump, stand and float switch
- Pump Box

PLANT ROOM & EQUIPMENT DETAILS:

- Approx 2m x 4.6m Plant Room with lockable door
- 2 x Industrial Standard Pressure Washers
- 1 x 3HP Air Compressor
- 2 x Wet/Dry Vacuums (2 motor)
- 1 x Bunded Chemical Tray
- Wash Tub
- Lighting
- 4 x Double GPO Waterproof Power Points
- Smoke Detector/Emergency Exit sign
- Fire Extinguisher
- Plumbing for Washing Machine

OFFICE DETAILS:

- Approx 2.3m x 3 m Office with Lockable door
- Lockable window with counter
- Lighting
- 4 x Double GPO Waterproof Power Points
- Smoke Detector/Emergency Exit sign



PROPOSED CAR WASH - ELEVATIONS			Project No. 2020-33
Scale 1:100 @ A3	Date Jun 12, 2020 4:50PM	Issue 1	A-200
CAR WASH BAY PROPOSAL The Lighthouse - Dee Why			

ITEM 3.3

**DA2020/1162 - 27 BELLEVUE AVENUE, AVALON BEACH -
DEMOLITION WORKS AND CONSTRUCTION OF THREE
SENIOR'S LIVING APARTMENTS WITH PARKING**

AUTHORISING MANAGER **Lashta Haidari**

TRIM FILE REF **2021/178598**

ATTACHMENTS

1 Assessment Report

2 Site Plan & Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/1162 for demolition works and construction of three senior's living apartments with parking at Lot 33 DP 11462, 27 Bellevue Avenue, Avalon Beach subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1162
----------------------------	-------------

Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 33 DP 11462, 27 Bellevue Avenue AVALON BEACH NSW 2107
Proposed Development:	Demolition works and construction of three senior's living apartments with parking
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Stephen Craig Thompson Julia Anne Thompson
Applicant:	Shed Architects Pty Ltd

Application Lodged:	22/09/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	02/10/2020 to 23/10/2020
Advertised:	02/10/2020
Submissions Received:	25
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 4,998,272.00
---------------------------------	-----------------

EXECUTIVE SUMMARY

Development Application (DA2020/1162) has been made for demolition works and construction of a two storey development containing 2 buildings, with a total of 3 self-contained dwellings pursuant to State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004. The development includes basement car parking for 6 vehicles. The works also include removal of 8 native trees and construction of new vehicular accesses.

Public exhibition of the development resulted in 24 submissions objecting to the proposal and raising concerns relating to impact on trees, traffic, safety, impact on character, non-compliance with planning controls and non-compliance with SEPP HSPD.

The subject site is zoned R2 Low Density Residential under the Pittwater Local Environmental Plan 2014 (PLEP 2014). Development for the purposes of seniors housing is prohibited with the zone. The application has been lodged pursuant to SEPP HSPD.

Despite amendments made to the application, Council's Landscape officer and Waste officer are not satisfied that the information addresses issues (particularly in regard to tree retention and location of waste storage). Further to this, Council's Development Engineer has provided that further information is required to complete a full assessment. This includes information to show the amendments made by Council's Traffic engineer (through recommended conditions).

The assessment of the application has found that the proposal in its current form cannot be supported as it fails to satisfy the requirements of both SEPP HSPD in terms of Clause 29 and Clause 50 and P21 DCP including Landscaping, waste, front building line and character.

Accordingly, the application is referred to the NBLPP with a recommendation for refusal to the Panel.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves demolition of the existing dwelling and structures, excavation, removal of trees, and construction of three self contained seniors housing units with 6 car parking spaces. In further detail, the proposal involves:

- Removal of 17 trees
- Two buildings which are both two storeys in height
- The western building contains two car parking stackers (4 spaces) in western building
- The eastern building contains two standard parking spaces along with waste storage
- A swimming pool is located on the eastern side of the dwelling

Amended Plans - 1/03/2021

Amended plans were provided on 1/03/2021 which provided the following changes:

- Proposal to retain Trees 25, 30 and 39
- Addition of Pavements to Bellevue Avenue and Wickham Lane
- Relocation of Garbage room
- Relocation of stairs (to reduce impact on Tree 30)
- Reconfiguration of bedroom windows
- Amendment to car stacker type (where upper car must be removed prior to lower car entering/exiting)

The assessment in this report is based on these amended plans and other additional information submitted on 1 March 2021.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act

- 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
 Pittwater 21 Development Control Plan - B5.7 Stormwater Management - On-Site Stormwater Detention
 Pittwater 21 Development Control Plan - B6.2 Internal Driveways
 Pittwater 21 Development Control Plan - C1.1 Landscaping
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy
 Pittwater 21 Development Control Plan - C1.12 Waste and Recycling Facilities
 Pittwater 21 Development Control Plan - C1.21 Seniors Housing
 Pittwater 21 Development Control Plan - C1.24 Public Road Reserve - Landscaping and Infrastructure
 Pittwater 21 Development Control Plan - D1.8 Front building line
 Pittwater 21 Development Control Plan - D1.13 Landscaped Area - General

SITE DESCRIPTION

Property Description:	Lot 33 DP 11462 , 27 Bellevue Avenue AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of an allotment located on the eastern side of Bellevue Road, western side of Wickham Lane, and northern side of Sanders Lane.</p> <p>The site is regular in shape with a frontage of 20.1m along Wickham Lane (and Bellevue Avenue) and a depth of 60.365m. The site has a surveyed area of 1214m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house on site.</p> <p>The site has a slope with a crossfall of approximately 8m from Bellevue Avenue to Wickham Lane. The site has vegetation which covers the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by</p>

a mix of development which includes residences and a school to the west, and businesses to the west.

Map:



SITE HISTORY

PLM2019/0191 - Construction of Seniors Housing Development

This PLM involved four seniors housing units with a 0m setback to Bellevue Avenue, and a setback of 2.3m to Wickham Lane. Advice was provided in this PLM that greater setbacks should be provided and a reduction should be made to the overall bulk of the building so that the presentation of the development was not akin to a residential flat building. Various advice was also provided by referral bodies in Council.

The development application is an amended design to that proposed in the prelodgement discussions, with the removal of 1 unit, provision of has provided a reduction to the design which has involved a reduction from four units down to three units, greater setbacks, and a response to comments provided by referral bodies.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on

Section 4.15 Matters for Consideration'	Comments
	13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iii) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	<p>The suitability of the site in terms of likely impacts on the environment and character has been discussed in detail in the various section of this report. In summary, the suitability of the site for the development as proposed in its current form remains uncertain, due to fact that the proposal has not fully addressed the environmental impacts of the proposed development.</p> <p>In this regard, under the circumstances, the site is not considered to be suitable for this particular form and scale of development, given that Council's Landscape Team do not support the proposal due to the environmental impacts caused on high retention value trees.</p> <p>Therefore, a conclusive determination that the site is suitable</p>

Section 4.15 Matters for Consideration'	Comments
	cannot be made at this stage.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application on the grounds of public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 02/10/2020 to 23/10/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 25 submission/s from:

Name:	Address:
Avalon Public School	11 Old Barrenjoey Road AVALON BEACH NSW 2107
Aida Blanche Wise	11 / 15 Old Barrenjoey Road AVALON BEACH NSW 2107
Mr John Yates Williams Mrs Carol Ann Williams	12 / 15 Old Barrenjoey Road AVALON BEACH NSW 2107
Mr Bill Tulloch	9 Barrabooka Street CLONTARF NSW 2093
Mr John Roderick Honner	9 / 17 - 19 Old Barrenjoey Road AVALON BEACH NSW 2107
Mrs Janine Yvonne Davis	8 / 15 Old Barrenjoey Road AVALON BEACH NSW 2107
Peter Pane	31 Bellevue Avenue AVALON BEACH NSW 2107
Mr Simon Lansdell Paine	3 Wickham Lane AVALON BEACH NSW 2107
Mrs Carol Maragret Altman	19 / 21 - 23 Old Barrenjoey Road AVALON BEACH NSW 2107
Mrs Christine Thelma Haughton	6 / 15 Old Barrenjoey Road AVALON BEACH NSW 2107
Mr Peter Gemell	23 Marine Parade AVALON BEACH NSW 2107
Mr Kenneth Eric Iverson	9 / 15 Old Barrenjoey Road AVALON BEACH NSW 2107
Mrs Maricela Barclay	7 / 15 Old Barrenjoey Road AVALON BEACH NSW 2107
Ms Louise Ellen Brennan	24 Bellevue Avenue AVALON BEACH NSW 2107
Mrs Jessica Clare Gouldthorpe	24 Bellevue Avenue AVALON BEACH NSW 2107
Mr Timothy William Cooper	70 Binburra Avenue AVALON BEACH NSW 2107
Hamish Green	11 Wallaby Circuit MONA VALE NSW 2103
Richard Fitzgerald	44 Marinna Road ELANORA HEIGHTS NSW 2101

Name:	Address:
Charlotte Mcewen	93 Spencer Road MOSMAN NSW 2088
Nathaniel Hammill	2 / 16 Clarke Street NARRABEEN NSW 2101
Holly Duggan	9 Mahogany Boulevard WARRIEWOOD NSW 2102
Aric Debelle-Cooper	70 Binburra Avenue AVALON BEACH NSW 2107
William Francisco	15 / 61 Avalon Parade AVALON BEACH NSW 2107
Mr Jason Paul Marty	PO Box 385 AVALON BEACH NSW 2107
Mr Stuart Philip Thomas	150 Beecroft Road CHELTENHAM NSW 2119

The matters raised within the submissions are addressed as follows:

- **Impact of trees and lack of appropriate landscaping**

Comment:

Council's Landscape officer has provided that the footprint of the building and design of the development does not provide for appropriate protection of existing trees. As such, this is a reason for refusal.

- **Impact on privacy including visual and acoustic. In particular, submissions raise concern with overlooking across Wickham Lane (a request is made for screening of the proposed windows at Wickham Lane).**

Comment:

The proposal complies with the exception for setbacks to Secondary Street frontages (3.5m), and provides reasonable separation between the subject property and neighbouring living areas. Along with conditions which could be provided for further screening and acoustic control, the proposal would not have any unreasonable privacy impact.

- **Traffic**

Comment:

Council's Traffic officer has provided support for the development but has recommended a series of conditions that require design changes to ensure an appropriate outcome. As a result of these design changes it is recommended that further information is provided prior to the issue of any consent. This is to give an ability to the Development Engineer and Waste Officer to provide a complete review of what is proposed in the application.

- **Safety including impact on nearby school children**

Comment:

It is recommended that further information be provided in accordance with comments provided by Council's Traffic officer. From this information, a full assessment could be made in regard to the safety of the application including impact on school children.

- **Inappropriate character, lack of scenic protection, overbearing bulk and scale, and overdevelopment; Inappropriate building configuration and excessive extent of building footprint**

Comment:

The proposal provides a reasonable outcome for the built form on site due to sufficient articulation, stepping with the slope, and appropriate physical separation (from the street and neighbours). However, the proposal does not provide an appropriate integration of natural features with the built form due to the concern raised by Council's Landscape officer in regard to

long term retention of the trees.

- **Non-compliance with planning controls**

Comment:

An assessment in this report is made against non-compliance to relevant planning controls. The proposed built form is generally acceptable in terms of visual presentation and amenity impact. However, variation to some controls such as landscaping and character, is not acceptable for reasons outlined in this report.

- **Concern with representation of *ground level (existing)*. "The survey spot levels of 13.91 over the sewer line, 13.20 [near the word 'undergrowth', 13.03, and 11.74 on Wickham Lane must be show accurately on this drawing."**

Comment:

A review of the survey and architectural plans has found that sufficient detail and accuracy has been provided to make an assessment of the application.

- **A list of recommended conditions has been provided**

Comment:

Various conditions have been recommended including for various stages of the development (Construction Certificate, Occupation Certificate, during works and operations). These conditions include requests for engineering details, control on waste, arborist details, control on amenity, traffic control and other environmental impact mitigation measures. Conditions of this nature for control on environmental impact would be imposed.

- **Inappropriate siting of site features such as parking and swimming pool**

Comment:

Council's Traffic officer has provided that the number of parking spaces and access to parking is suitable, subject to conditions. The proposed swimming pool is also in a suitable location, and would not cause any unreasonable amenity impact due to reasonable separation from neighbours.

- **Precedent**

Comment:

An assessment under C1.21 of the Pittwater DCP has found that the proposal would have a cumulative impact that is unreasonable due to impact on trees on site. This impact on trees would provide an undesirable outcome for landscaping in the area.

- **Money could be invested elsewhere (such as in to families)**

Comment:

The proposed use for seniors housing is permitted in the zone, and under the SEPP HSPD. In this regard, the matter of how money is invested is either a private matter and not a matter for or a matter for other public policy or a matter for consideration under the EP&A Act.

REFERRALS

Internal Referral Body	Comments

Internal Referral Body	Comments
Landscape Officer	<p>REFUSAL</p> <p>Demolition of an existing dwelling house and ancillary structures, removal of trees, excav Seniors Housing development incorporating 3 x self-contained units, 6 car parking space works and new tree planting.</p> <p>In the initial landscape assessment of this application, consideration of the submitted Lar Botanica, and the Arboricultural Impact Assessment prepared by Construct By Design is following relevant controls and policies:</p> <ul style="list-style-type: none"> • Housing for Seniors or People with a Disability: clause 33 Neighbourhood amenity and • Seniors Living Policy: clause 2. Site Planning and Design - deep soil zone of 15% with and clause 3. Impacts on Streetscape - retain trees on the street and in front and rear se <p>streetscape and neighbours.</p> <ul style="list-style-type: none"> • Pittwater 21 DCP Controls: B4.22 Preservation of Existing Trees and Bushland Vegetat Seniors Housing; and C1.24 Public Road Reserve - Landscaping and infrastructure. <p>Following issues raised regarding development impact to existing trees identified as trees (Sydney Red Gum) and tree 27 (Stringy Bark), amended architectural plans and a update assessment have been issued to Council for assessment. The development works, base proposes the retention or removal of trees as follows:</p> <ul style="list-style-type: none"> • Retention within the development site: five native trees are proposed for retention (T25, (T26, T30, T33, T39) requiring arboricultural attendance by a Project Arborist, • Removal within the development site: two native trees (T34, T35) are proposed for rem and six native trees (T16, T22, T31, T32, T36 and T38) are proposed for removal due to removal regardless of development, with a further four exempt species (T17, T20, T40 ar relocated and not requiring Council consent, • Relocation within the development site: two palms (T18 and T19) are proposed for reloc • within Council's road verge: all twenty-one street trees (T1, T2, T4, T5, T6, T9, T12, T14 and T29) are proposed for retention, with four (T21, T23, T24 and T29) requiring arboricu Arborist, and six are dead/dying (T3, T7, T8, T10, T11, T13) and should be removed, • within adjoining property: all three trees within 5 metres of development are proposed for requiring arboricultural attendance by a Project Arborist <p>Tree root investigations have been carried to locate roots of significance and the updatec provide recommendations for tree protection measures. Concerns remain that excavator existing trees to proposed building and structures will place ongoing issues with the arbor trees in the long term, as opposed to arboricultural construction methods near the existin</p> <ul style="list-style-type: none"> • T21 (Sydney Red Gum): the updated arboricultural impact assessment provides constr the use of permeable pavers for the proposed new driveway which is contrary to Council' concrete driveways, and hence the advantages of permeable paving to providing moistur system is not available, thus restricting the available area for future root growth deemed i an encroachment should be compensated elsewhere and contiguous with the tree protec elements around T21 including driveway and pavement, and building reduces the natural growth, • T23 (Sydney Red Gum), T25 (Cheese Tree), and T26 (Sydney Red Gum): the existing approximately 3 metres and more away from buildings to be able to construct the develop against the proposed walkway, and in close proximity to the lift and pool, such that the lo trees is at risk from resident safety concerns and requests for removal based on proximit loss of solar access to the building internal areas and the pool. Council would be requirec applications for removal on merit, and it is considered that such possible removal then dc

Internal Referral Body	Comments
	<p>replacement trees of a similar size due to the reduced natural ground areas,</p> <ul style="list-style-type: none"> • T33 (Sydney Red Gum): the existing tree trunk is located approximately 1 metre from the building line / terrace/ lounge of Apartment 3 at the lower ground level, and whilst the updated assessment determines construction in close proximity is feasible, the long term preservation of the tree is subject to resident safety concerns and requests for removal based on proximity to building and the building internal areas. Council would be required to assess any such tree application for removal. It is considered that such possible removal then does not present any opportunity for a replacement tree as the rear setback is insufficient in area to support an equal sized canopy tree. <p>Landscape Referral are of the opinion that a reduction of the footprint away from these existing trees is required for retention of the trees in the long term, and provide an acceptable landscape outcome, which is consistent with the landscape setting typical of the locality.</p>
NECC (Bushland and Biodiversity)	<p>APPROVAL - SUBJECT TO CONDITIONS</p> <p>Updated Biodiversity Referral (4 March 2021)</p> <p>This updated referral is based on the following additional information:</p> <ul style="list-style-type: none"> • Arboricultural Impact Assessment, Revision C (Bradshaw Consulting Arborists, 26 February 2021) • Flora and Fauna Impact Assessment Report, Version 2.1 (Land Eco Consulting, 26 February 2021) • Amended Landscape Plans, Issue B (Narelle Sonter Botanica, 26 February 2021) <p>In response to concerns raised during initial assessment, further work has been undertaken and ongoing impacts to prescribed native trees on site and within adjoining land. Further assessment of the NSW Biodiversity Conservation Act 2016 has also been undertaken, with monitoring of 'significance' for the Pittwater Spotted Gum Forest EEC being undertaken.</p> <p>The results of microbat 'anabat' monitoring indicate that microbats may be traversing the foraging trips; however, the ecological report concludes that the detected species are unlikely to be breeding habitat. Furthermore, the amended Flora and Fauna Report provides further detail and discusses this in context of the broader local occurrence of Pittwater Spotted Gum Forest. The results conclude that the proposal is unlikely to result in a significant impact to threatened entities and concurs with this conclusion (subject to conditions).</p> <p>The updated Landscape Plans appear to include minimal changes in response to previous proposed retention of two additional trees (T30 and T39). Further amendments to the Landscape Plans are required in order to provide appropriate compensatory plantings (e.g. substitution of WA <i>Corymbia</i> species). This will be conditioned.</p> <p>It is understood that further assessment regarding the extent of prescribed tree removal and relevant controls will be undertaken by Council's Landscape referral body.</p> <p><u>Comments in regard to original plans</u></p> <p>The Biodiversity Referral Body cannot support the proposal as submitted due to inconsistency with Pittwater DCP Clause B4.3 (Flora and Fauna Habitat Enhancement Category 2 Land). A requirement for assessment under s 7.3 of the NSW Biodiversity Conservation Act 2016 is required.</p> <p>Impact to Remnant Canopy Trees</p>

Internal Referral Body	Comments
	<p>This control aims to achieve development which will "retain and enhance habitat for three ecological communities" and that results in "no net loss in native canopy trees". The proposed removal of 11 out of 15 prescribed native trees on the site, eight of which are assessed as high significance and three of high landscape significance. Only four prescribed native trees are proposed for retention. An additional Cabbage Tree Palm (<i>Livistona australis</i>) which is of very high significance to the existing building (i.e. not prescribed) is also proposed for removal.</p> <p>The proposal will remove at least 75% of prescribed native trees on site, and potentially also within the adjoining road reserves and property. It is noted that retention of significant trees (Trees 21 and 37) relies on specialised tree protection measures such as the application of mulch and additional irrigation during summer. Concern is raised that these measures may allow short term but that the extent of TPZ impacts will serve to accelerate the trees' decline over their life expectancy. It is assumed that impacts to neighbouring and road reserve trees will be addressed by the Landscape Referral Body.</p> <p>The proposal to replace 12 or more remnant native trees with one Western Australian dwarf Ash is also inconsistent with the objectives of the control.</p> <p>In addition, PDCC Clause B4.3 seeks to retain and enhance threatened species habitat, which may form roost habitat for threatened microbats. It is not considered that the removal of trees is justified by the statement that "buildings are not protected under the BC Act and therefore the removal is not an assessment" - particularly given that the ecological survey did not establish presence/absence of replacement habitat is proposed.</p> <p>Finally, the ecological report states that PDCC Clause B4.3 does not apply to the subject site as it is against a different B4 control. Applicable planning controls must be addressed, as per previous advice.</p> <p>Test of Significance for Pittwater and Wagstaffe Spotted Gum Forest EEC</p> <p>The subject site is identified as part of a broader local occurrence of Pittwater Spotted Gum Forest, 'Native Vegetation of the Sydney Metropolitan Area' mapping (OEH, 2016) (Figure 1). Bayside Council provided pre-lodgement advice that the application was to be accompanied by a test of significance for the Pittwater and Wagstaffe Spotted Gum Forest Endangered Ecological Community (EEC). It was determined that vegetation on the subject site is not consistent with the EEC determination due to the absence of characteristic Spotted Gum (<i>Corymbia maculata</i>) and Ironbark (<i>Eucalyptus parramattensis</i>), as well as the absence of shale-derived soils. A test of significance for the EEC has therefore not been conducted.</p> <p>Whilst the extant canopy layer on the subject site does appear to be dominated by Sydney Blue Gum, it is noted that at least four Spotted Gums were recorded on the adjoining property by a Council arborist in May 2018. The submitted arborist report also identifies two Spotted Gums (Trees 42 and 43) on the subject site at the time of inspection in February 2019. These two trees are assessed as being of a significant size, suggesting that all trees in this area are part of the same remnant vegetation. That vegetation on the site may represent a transitional community between Pittwater Spotted Gum Forest and Coastal Enriched Sandstone Dry Forest (PCT 1181).</p> <p>It is acknowledged that the subject site is located on the periphery of the historically mapped Pittwater Spotted Gum Forest. Notwithstanding this, and the fact that vegetation on the subject site may be transitional, it is contiguous with vegetation that clearly aligns with the EEC (e.g. Elouera Road). As such, the removal of trees from this contiguous patch of vegetation is considered likely to have at least an indirect impact on the EEC through effects and loss of wildlife/pollinator habitat. In accordance with the precautionary principle, a test of significance should be addressed through a test of significance, regardless of whether vegetation on the subject site is considered to be part of the EEC.</p>

Internal Referral Body	Comments
	<p>determination or instead exists as a transitional form intergrading into the non-threatened</p> <p><i>Figure 1. Mapped local occurrence of Pittwater Spotted Gum Forest (PCT 1214) (OEH, 2019)</i></p>
NECC (Development Engineering)	<p>REFUSAL - More information required</p> <p>The subject site is bounded by Sanders Lane & Wickham Lane and Bellevue Avenue. The gutter on all three road frontages. Provisions of kerb & gutter and road shoulder is general development.</p> <p>There are a number of large trees within the road reserve next to the proposed kerb & gutter alignment for all three roads.</p> <p>Council's Transport Network (Traffic) and Transport & Civil Infrastructure (Road Asset) are to the following:</p> <p>:-</p> <ul style="list-style-type: none"> • The acceptable pavement widths for all three roads

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • The proposed road alignment with reduced road width which is not to the general • Type of kerb that are permitted adjacent to tree such as bitumen kerb in order to protect tree roots and stability of the trees • Minimum cross fall of for the pavement. Are one way cross fall permitted in order • Impact on existing mature tree. Council's. Parks Assets are requested to provide allowable construction adjacent to the trees. <p>Development Engineers requires comments from Council's Transport Network (Traffic), Traffic (Road Asset) and Park Assets prior to full assessment of this application.</p> <p>Comments from Road Assets, Traffic and Landscaping completed</p> <p>The comments from Council's Traffic Engineer and Landscape Architect indicate that they meet their objectives in terms of the footpath and road design. It is considered that these comments meet the objectives of the applicant and revised plans submitted for further assessment.</p> <p>In terms of the proposed access driveways to the site, the engineering plans have been reviewed.</p> <p>With regard to the submitted stormwater management plans, the design proposes an on-site tank under the habitable floor level of apartment 3 which is not acceptable. A review of the plans could be relocated under the proposed terrace area of apartment 2 adjacent to the proposed footpath. The relocation of the tank are to be submitted for assessment.</p> <p>Development Engineers cannot support the application due to insufficient information to support the application under Pittwater 21 DCP.</p>
Road Reserve	<p>APPROVAL - SUBJECT TO CONDITIONS</p> <p>There is limited impact on existing Council road infrastructure however the applicant will need to provide for the public road site frontages (Bellevue Avenue, Sanders Lane, Wickham Lane). A continuous footpath is available to pedestrians from the development to Council's footpath network. Council's request is to provide conditions regarding same requiring a s138 application for civil works.</p> <p>Given the property address is 27 Bellevue Avenue, consideration should be given to some form of property identification from the Bellevue Avenue frontage to assist in provision of services.</p> <p>The proposal for bin collection to be on Sanders Lane footpath outside Avalon Public School may have an impact on pedestrian accessibility and safety of pedestrians on bin collection days. Council will advise.</p>
Strategic and Place Planning (Urban Design)	<p>APPROVAL - SUBJECT TO CONDITIONS</p> <p>The proposal has addressed the Urban Design issues identified in the Pre-Lodgement meeting.</p> <p>1. Neighbourhood character – As a development that will increase residential density, it is important that the buildings respond to and enhance the qualities and character of the surroundings. Well-designed buildings respond to and enhance the qualities and character of the surroundings. The proposed main street elevation to Bellevue Avenue should be comparable with the generally green and lush streetscape. The Wickham Lane elevation should be reduced to one as required by the secondary front setback and the double storey built form be reduced to one as required by the secondary front setback.</p>

Internal Referral Body	Comments
	<p>to be one storey) The proposed semi-basement parking should similarly be setback 6.5m from the Bellevue deep soil landscaping. Response: The proposal has been designed as two pavilions that step down the slope to character with the streetscape. The rear Wickham Lane builtform of a single storey structure ground level is acceptable given the site constraints of a sloping site and existing trees to</p> <p>2. The pavilion style built form design approach to allow gaps of landscape to separate buildings Response: The proposal has been designed as two pavilions with appropriate landscaping</p> <p>3. The possibility of a dual-occupancy development was discussed as issues of footpaths which involve cutting down substantial number of trees might be minimised. The provision more manageable. Response: The proposal has allowed existing trees to be retained and accessible design</p>
Traffic Engineer	<p>APPROVAL - SUBJECT TO CONDITIONS</p> <p>Referral comments 2/3/20</p> <p>Concerns were previously raised regarding waste collection and access for vehicles, road and the proposed mechanical car stacker system. Some of these issues have been addressed and can be conditioned as part of the Conditions of Consent.</p> <p>Road and Pedestrian Infrastructure</p> <ul style="list-style-type: none"> - A 1.5m footpath is required for the full frontage along Wickham Lane. Kerb ramps are required on Wickham Lane at the intersection with Sanders Lane for pedestrian access across the laneway. - A 1.5m footpath is required along the frontage of Bellevue Avenue. The footpath should be along the Lane property boundary, with the provision of new kerb ramps on both sides of Bellevue Avenue to the road. Additional works would be required on the western side of Bellevue Avenue including footpath widening to enable the incorporation of the new kerb ramp on this side of the road required at the corner of Bellevue Avenue and Sanders Lane for pedestrian access across the road. - The footpath connection to the bus stop located along Old Barrenjoey Road, is not fully compliant. A 1.5m footpath is required to comply with the SEPP accessibility and gradient requirements. The facilities should be along the northern side of Sanders Lane and not the southern side as this connection provides safer access for pedestrians exiting the development by crossing Wickham Lane (avoiding vehicle turning movements) instead of Sanders Lane. This will also prevent any works on Sanders Lane where there is high pedestrian use of the footpath and minimises impacts to the School of Arts construction period. <p>Design road widths:</p>

Internal Referral Body	Comments
	<p>Sanders Lane - Minimum 5.1m wide</p> <p>Bellevue Avenue - 7.5m wide between kerbs</p> <p>Wickham Lane</p> <p>- 4m wide (north of driveway to lower level car park)</p> <p>- 4.5m wide (from Sanders Lane to 10m north of intersection), to enable right turn from W for waste vehicles</p> <p>Waste collection</p> <p>The storage area for garbage bins has been relocated to the lower parking level. An access driveway is to be provided from the storage area to the bin collection point in the laneway. The team are currently investigating a proposal to convert Wickham Lane to 'One Way' for all southbound direction. The nature strip on the eastern side of Wickham Lane, between the No.15 Old Barrenjoey Road, is to be infilled with concrete to provide a hardstand area, to waste vehicles. Realignment of the eastern kerb on Wickham Lane is required to facilitate Sanders Lane.</p> <p>Mechanical car stacker system</p> <p>The car stacker system which requires the upper car to be removed for lower car access arrangements for tandem parking so is therefore considered acceptable.</p> <p>Construction Traffic Management Plan</p> <p>The management of construction traffic is to be addressed in the approval of the Construction Traffic Management Plan which would provide specific details regarding construction vehicle access to and from the activities affecting vehicle and pedestrian traffic will be restricted between 9.00-10.00am</p> <p>The revised proposal is acceptable, subject to conditions as recommended.</p> <p>Referral comments 7/12/20</p> <p>The proposal is not acceptable in its current form due to traffic, pedestrian and parking is insignificant with minor impact to the existing road network. The Applicant needs to address information prior to resubmitting the proposal.</p>

Internal Referral Body	Comments
	<p>Wickham Lane One Way</p> <p>Council's Transport Network team are currently investigating a proposal to convert Wickham Lane to vehicular traffic only in the southbound direction. Bicycles will continue to be able to travel in both directions. Information with swept paths are required to demonstrate that larger vehicles including trucks (up to 12m length) can safely turn right from Wickham Lane into Sanders Lane without mounting the pedestrian access and safety at the south-eastern corner of the site. The truck movement is currently parked on the southern side of Sanders Lane.</p> <p>Waste collection</p> <p>Both Waste Services and Assets have already raised issues with the proposed bin collection area. The area is not supported due to the impact on pedestrian accessibility and safety of pedestrians along Sanders Lane. The Accessibility Report also indicates that the accessway from Apartment 1 to the bin area is approximately 1:8 and suitable for vehicle access only. The gradient is not accessible for bins from the storage area to the kerb for collection.</p> <p>Road and Pedestrian Infrastructure</p> <p>Kerb and gutter is to be provided along Wickham Lane, Sanders Lane and Bellevue Avenue.</p> <p>Design road widths:</p> <p>Wickham Lane - 4m wide between kerbs</p> <p>Sanders Lane - 5.5m wide, however minimum 5.1m permitted due to impact on existing trees</p> <p>Bellevue Avenue - 7.5m wide between kerbs</p> <p>The proposal includes upgrades to pedestrian access and footpath connections at the southern end of the site, however no measures are proposed to improve pedestrian facilities at other locations. Concrete footpaths are to be provided along the full frontage of the site, however it is understood that this</p>

Internal Referral Body	Comments
	<p>existing site impacts. As a minimum, the Applicant is required to provide new kerb ramps of the site to enable pedestrians to cross and link to the existing footpath, with a new cross of Dress Circle Road. Additional works within Council's Public Road Reserve including a required on the western side of Bellevue Avenue to enable modifications to the existing footpath and a new kerb ramp. The provision of a 1.5m wide footpath is required to connect the two new eastern side of Bellevue Avenue.</p> <p>Mechanical car stacker system</p> <p>The proposal includes a mechanical car stacker system to provide for parking to Apartment Sanders Lane. The Traffic & Parking report indicates that the lower platform head height platform head height is 1.9m, which deviates from the Clause 5.3.1 of AS2890.1, where a clear height of 2.0m between the floor and overhead obstruction is required. The report states that this is acceptable for the lower platform and a larger vehicle for the upper platform. However, the reduced height requires consideration the comfort of seniors with existing health issues or who may be taller than existing between the vehicle and the car stacker system. Appendix B of the Standard, Set clear height between floors must also cater for persons walking with reasonable comfort. The height of the Australian male is 1.88m. It is therefore recommended that for Seniors living the head height for the mechanical car stacker system should be 1.9m. This minimum requirement requires depth, and may also require adjustments to the levels to access the stacker system.</p>
Waste Officer	<p>REFUSAL</p> <p>Updated Waste Services Referral - Amended plans received 1/3/2021 through Tom Pros</p> <p>Recommendation – Refusal</p> <p>Bin storage facility is to be provided in accordance with Council's design guidelines.</p> <p>Specifically:</p> <p>A separate and unobstructed 1200mm wide pedestrian path between the Waste Storage kerb that is separate to vehicle access must be constructed to allow Council and its agent access.</p> <p>The waste storage room must be within 6.5 metres walking distance from the property boundary. The opening width of the doorway to the waste storage room from the street is less than 1200mm fitted on the Residential Waste Storage Area, pathway and access must be:</p> <ul style="list-style-type: none"> a) A minimum opening width of 1200mm. b) Must open outwards and be able to be latched in an open position c) Unobstructed by any locks and security devices.

Internal Referral Body	Comments
	<p>No plant or infrastructure such as utility meters, pumps, air conditioning compressors etc bin room.</p> <p>As this is a multiple occupancy proposal Council will be providing a "wheel out / wheel in" corporation / building occupants are not to place the bins at the kerbside for collection.</p> <p>For the applicant's information:</p> <p>Please note that there is more than sufficient space in the waste storage area for the req</p> <p>The requirement for the shared Waste Storage Area is to have a minimum area for 4 con bins). The dimensions for 240L bin are: · Depth: 750mm · Width: 600mm · Height: 1060n</p> <p>Waste Services Referral</p> <p>Recommendation – Refusal</p> <p>Specifically:</p> <p>Bin collection cannot be undertaken from Saunders Lane. The applicant is required to de occur from Bellevue Avenue or Wickham Lane bearing in mind that the system proposed seniors or people with a disability, which could include residents in wheelchairs.</p> <p>The applicant may choose from the following 2 options:</p> <p>1) A set of 4 individual bins per dwelling</p> <p>- Residents will be required to self-present the bins for collection to Bellevue Avenue or V</p> <p>The Waste Storage Area must have a minimum area for 4 containers (waste and recyclir quantities and dimensions for each container are:</p> <p>80L: · Depth: 510mm · Width: 465mm · Height: 825mm</p> <p>140L: · Depth: 630mm · Width: 550mm · Height: 915mm</p> <p>240L: · Depth: 750mm · Width: 600mm · Height: 1060mm</p> <p>2) A set of communal bins for 3 dwellings</p> <p>- Council will provide a wheel in / wheel out to communal Waste Storage Area with street Wickham Lane</p> <p>The shared Waste Storage Area must have a minimum area for 4 x 240L containers (wa: dimensions for each 240L bin are Depth: 750mm; Width: 600mm; Height: 1060mm</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of being contaminated and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1133741M).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	35	35

If recommended for approval, a condition may be included in the recommendation of this report requiring an updated BASIX certificate in accordance with the amended plans, and compliance with the commitments indicated in the BASIX Certificate.

SEPP (Housing for Seniors or People with a Disability) 2004

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for three

self contained seniors housing units.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows;

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

Comment:

The proposed development is consistent with aim (a) of the Policy as the development for Seniors Housing will provide an increase supply of accommodation to meet the needs of seniors or people with a disability.

In relation to (b), the proposal provides efficient use of exiting infrastructure and services as access is provided to and from the site via footpaths and close proximity to bus stops. However, further information is required in regard to comments provided by Council's Traffic officer in regard to design of footpaths and road design along Wickham Land and Bellevue Avenue.

In relation to (c), the proposal involves a good design with respect to the provisions of local policies and the the SEPP HSPD in terms of the stepping and articulation of the built form, considerations of access, internal amenity and amenity impacts. However, the proposal does not provide a suitable design in terms of integration of natural features with the built form or suitable design of waste facilities. In particular, Council's Landscape officer is not satisfied as to the long term retention of trees, and Council's Waste officer is not satisfied that the design for Waste meets Council's guidelines.

Chapter 2 – Key Concepts

Comment: The proposed development is consistent with the key concepts contained within SEPP (HSPD). The development comprises self-contained dwellings which are to be occupied by seniors or people with a disability.

As such, the proposed development is considered consistent with Chapter 2 of SSEPP (HSPD).

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and	The proposal provides appropriate access to the provisions through bus access which complies with the requirements under	Yes.

Development Criteria			
Clause	Requirement	Proposal	Complies
	commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	Clause 26(2), being bus stops along Old Barrenjoey Road. The site also has access to Avalon Beach village Centre which is within 400m.	
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400metres away.	The proposal is within 400m of Avalon Beach Centre, and also within 400m of bus stops along Old Barrenjoey Road, Bellevue Avenue and Avalon Parade.	Yes.
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	The subject site is not in bush fire prone land.	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	Reticulated water and sewerage infrastructure is presently available to the site. The proposed seniors housing development is capable of connecting to a reticulated water system, in accordance with the provisions of Clause 28.	Yes
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25 (5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v): i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or	The development is considered against the requirements contained within Clause 25 (5) for the following reasons: i) The site is located within a low density residential area where there is a mix of historical building forms including detached dwellings, other residential development, and nearby businesses/shops along Old Barrenjoey Road. Notwithstanding this, the site and the adjoining properties are screened by often dense vegetation. The proposal does not provide proper consideration through building design for the future retention and enhancement of environmental features to maintain this established natural character.	No - inconsistent with (i)

Development Criteria			
Clause	Requirement	Proposal	Complies
	will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	iii) The Applicant has provided an Access Report to support the proposal and Council's Traffic officer supports the application subject to some suggested amendments. v) The proposed development includes 3 apartments constituting of 3 bedrooms and basement parking structure for 6 vehicles. The proposed bulk and scale of the development reasonable given the compliant FSR of 0.5:1, and substantial stepping, modulation, and articulation of building bulk. However, the proposal does not provide an appropriate response to surrounding character due to the lack of an appropriate design for tree retention.	
PART 3 - Design Requirements – Division 1			
30	A site analysis is provided.	A site analysis has been provided to meet the requirements of this clause.	Yes

Clause 31 Design of in-fill self-care housing

Pursuant to Cause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form. Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.	The proposed development provides a two-three storey development with basement parking. The building form represents a well distributed building mass that is well stepped across the site. However, there is not appropriate integration with the natural environment or an achieved balance between landscapes and built form. The Desired Character for the Avalon Beach locality is identified as: <i>"The most important desired future character is that Avalon Beach will continue to provide an informal relaxed casual seaside environment. The locality will remain primarily a</i>

Section	Requirements	Comment
		<p><i>low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancies will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity, fewer hazards and other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, commercial, community and recreational facilities will serve the community."</i></p> <p>The proposed built form is consistent with the desired character of the locality which seeks low density development forms. However, the proposal does not ensure that an appropriate landscaped setting will be maintained given the requirement within the character statement and the context of the area.</p>
2. Site Planning and design	<p>Objectives of this section are to:</p> <p><i>-Minimise the impact of new development on neighbourhood character</i> <i>-Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.</i></p>	<p>The proposed development does not minimise the impact on the neighbourhood character which integrates substantial vegetation and built form.</p> <p>The developments presentation to Bardo Road is reflective of a large residential flat building elevated above street level and framed by a large wall seeking to obscure the substantial ramp access required for the site.</p> <p>The undeveloped sections of the site provide limited potential to support existing trees on site.</p>

Section	Requirements	Comment
3. Impacts on streetscape	<i>Objectives of this section are to:</i> <i>-Minimise impacts on the existing streetscape and enhance its desirable characteristics</i> <i>-Minimise dominance of driveways and car park entries in streetscape.</i>	As identified above, the development does not provide a sympathetic presentation to the street or integration with the landform in a landscaped setting due to impact on trees provided by Council's Landscape officer.
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	Subject to conditions including privacy screening, the proposal provides a sufficient design including physical separation and articulation of the built form to ensure there would be no unreasonable amenity impact.
5. Internal site amenity	Objectives of this section are to: -Provide safe and distinct pedestrian routes to all dwellings and communal facilities.	The site layout provides appropriate and safe access to each unit.

Clause 32 Design of residential development In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	The Avalon Beach Locality statement provides the following identification of character: The residential areas are of mixed style and architecture, with a commonality being landscaped boundaries and treed frontages. Although the proposed development will maintain a building height limit below the tree canopy and minimise bulk and scale. The impact on vegetation surrounding the site is unacceptable.	No
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and	Not applicable.	N/A

Control	Requirement	Proposed	Compliance
	<p>any relevant heritage items that re identified in a local environmental plan.</p> <p>c. Maintain reasonable neighbour amenity and appropriate residential character by;</p> <p>(i) providing building setbacks to reduce bulk and overshadowing</p> <p>(ii) using building form and siting that relates to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development,</p> <p>(iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbors.</p> <p>d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,</p> <p>e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.</p>	<p>The proposed development provides compliant side setbacks to the upper levels, and provides articulation in the built form in order to minimise amenity impact. The built form also steps down with the topography of the site so that the building height and bulk does not result in any unreasonable amenity impact such as overshadowing. Further, the building heights at the street frontages provide a stepped presentation to adequately reduce the presentation of built form in the streetscape.</p> <p>The proposed front setbacks (front and secondary front), provide setbacks that involve sufficient articulation, a compliant building height, and integration of landscape features such as planter boxes. However, Council's Landscape officer has provided that a greater setback should be provided from the tree in Wickham lane. In relation to this requirement, Council's Landscape Architect provided the following assessment:</p> <p><i>"The Landscape Plan is generally suitable except that no tall canopy trees are proposed as replacement trees for canopy loss and thus the built form is not softened.</i></p>	<p>Yes.</p> <p>No.</p>

Control	Requirement	Proposed	Compliance
	<p>f. retain , wherever reasonable, major existing trees, and</p> <p>g. be designed so that no building is constructed in a riparian zone.</p>	<p><i>Within the rear setback facing Wickham</i> <i>Lane insufficient deep soil area is available, and within the front setback facing Bellevue Avenue limited deep soil area if available to support tall canopy trees typical of the Avalon locality."</i> The proposed development seeks removal of 8 native species and 4 exempt species. Concerns are raised over the potential impact on a high retention Sydney Red Gums (T21, T23 and T33). The Landscape assessment of this application does not support the proposal due to impact on vegetation and landscape character. The site is not within a riparian zone.</p>	
CL 34 Visual and acoustic privacy	<p>The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</p>	<p>The proposed north, south and west elevations provide suitable design of openings and appropriate physical separation from neighbouring properties to ensure overlooking impact would be suitably minimised in these locations.</p> <p>If granted approval, a condition would be recommended to require further screening to the eastern elevation given the proximity to residential development on the opposite side of Wickham Lane. It is also noted that Council's Landscape officer has concern in regard to the retention of Tree 33 which assists in providing screening of the eastern elevation.</p> <p>A condition may also be applied in regard to the control</p>	Yes.

Control	Requirement	Proposed	Compliance
		on noise both during construction and operation.	
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	The solar diagrams submitted with the application indicate that 100% of the apartments receive a minimum of 3 hours sunlight at winter solstice.	Yes.
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	Council's Development Engineer has raised concern in relation to the proposed stormwater and OSD design.	No
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are	The proposal involves three units with sufficient and separate ground level access. The proposal also involves various openings which provide opportunity for passive surveillance.	Yes

Control	Requirement	Proposed	Compliance
	required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.		
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	The proposed development has demonstrated that compliant access can be provided from the site to the closest public transport links to access essential services. These arrangements are subject to conditions and amendments required by Council's Traffic officer and development engineer.	Yes
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	The proposed waste storage area does not satisfy the requirements of Council's Waste Management Guidelines.	No

Part 4 - Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1000 sqm	1214m ²	Yes
Site frontage	20 metres	20.1m	Yes
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	8m	Yes

Control	Required	Proposed	Compliance
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	Maximum 2 storeys	Yes
	A building located in the rear 25% of the site must not exceed 1 storey in height	Section of building toward Wickham Lane is 2 storeys in height (apartment 3)	No

Clause 41 Standards for hostels and self contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. The following table outlines compliance with the principles set out in Schedule 3 of SEPP HSPD.

Control	Required	Proposed	Compliance
Wheelchair Access	If the whole site has a gradient less than 1:10, 100% of the dwellings must have wheelchair access by a continuous path of travel to an adjoining public road. If the whole of the site does not have a gradient less than 1:10 the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10 or 50% whichever is the greater.	Complies in accordance with the Access Report	Yes
Security	Pathway lighting (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) Must provide at least 20 lux at ground level	Lighting may be conditioned to ensure compliance with glare and reflection should the application be considered for approval.	Yes
Letterboxes	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous	A condition may be provided to ensure an appropriate location for a letter box.	Yes.

Control	Required	Proposed	Compliance
	accessible path of travel, and (b) must be lockable, and (c) must be located together in a central location adjacent to the street entry.		
Private car accommodation	(a)Carparking space must comply with AS2890 (b)One space must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c) any garage must have a power operated door or there must be a power point and an area for motor or control rods to enable a power operated door to be installed at a later date.	Each apartment is provided with a space that is readily accessible. Council's Traffic officer is satisfied with the proposed car stacker arrangements.	Yes.
Accessible entry	Every entry to a dwelling must comply with Clause 4.3.1 and 4.3.2 of AS4299	Complies	Yes
Interior general	Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.	Complies	Yes
Bedroom	At least one bedroom within each dwelling must have: (a) An area sufficient to accommodate a wardrobe and a queen size bed (b) A clear area for the bed of at least 1200 mm wide at the foot of the bed and 1000mm wide beside the bed between it and the wall, wardrobe or any other obstruction. (c) Power and telephone outlets and wiring described in Clause 8 of Schedule	Complies in accordance with the Access Report	Yes

Control	Required	Proposed	Compliance
	3.		
Bathroom	The bathroom is to comply with the requirements described in Clause 9 of Schedule 3.	Complies in accordance with the Access Report	Yes
Toilet	The toilet is to comply with the requirements described in Clause 9 of Schedule 3.	Complies in accordance with the Access Report	Yes
Surface finishes	Balconies and external paved areas must have slip resistant surfaces.	Complies in accordance with the Access Report	Yes
Door hardware	Door handles and hardware for all doors must be provided in accordance with AS4299.	Complies in accordance with the Access Report	Yes
Ancillary items	Switches and power points must be provided in accordance with AS4299.	Complies in accordance with the Access Report	Yes
Living & dining room	A living room must have a circulation space in accordance with Clause 4.7.1 of AS4299, and a telephone adjacent to a general power outlet. Also a living and dining room must have a potential illumination level of at least 300 lux.	Complies in accordance with the Access Report	Yes
Kitchen	The kitchen must comply with the requirements of Clause 16 of Schedule 3	Complies in accordance with the Access Report	Yes
Access to kitchen, main bedroom, bathroom & toilet	The kitchen, main bedroom, bathroom and toilet must be located on the entry level.	Complies in accordance with the Access Report	Yes
Laundry	The laundry must comply with the requirements of Clause 19 of Schedule 3.	Complies in accordance with the Access Report	Yes
Storage	A self-contained dwelling must be provided with a linen storage in accordance with Clause 4.11.5 of	Complies in accordance with the Access Report	Yes

Control	Required	Proposed	Compliance
	AS4299		
Garbage	A garbage storage area must be provided in an accessible location.	Complies in accordance with the Access Report	Yes

Part 5 Development on land adjoining land zoned primarily for urban purposes

This part is not applicable to the subject site.

Part 6 Development for vertical villages

This part is not applicable to the proposed development.

Part 7 Development standards that cannot be used as grounds to refuse consent

Clause 46 Inter relationship of Part with design principles in Part 3

Clause 46 states that nothing in Part 7 permits the granting of consent pursuant to the Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	8m	Yes
Density and scale	0.5:1	0.5:1	Yes
Landscaped area	30% of the site area is to be landscaped	42.8%	Yes
Deep soil zone	15% of the site area Two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	18.5%	Yes
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid	A minimum 3 hours solar access is achieved to all living areas and private open space between 9am and 3pm on 21 June.	Yes

Control	Required	Proposed	Compliance
	winter		
Private open space	<p>(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and</p> <p>(ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area</p>	Complies	Yes
Parking	(10 bedrooms proposed – 5 carparking spaces required)	The requirement is for 4.5 spaces and the proposal involves 6 spaces.	Yes
Visitor parking	None required if less than 8 dwellings	3 dwellings proposed	Yes

SEPP (Infrastructure) 2007

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Clause 40(4) (c) SEPP (SHPD) requires development in the rear 25% area of the site not to exceed 1 storey in height.
Proposed:	Apartment 3 -The rear section of Apartment 3 has a 3m projection in to the rear setback
Percentage variation to requirement:	The area that breaches the 25% equates to 20% breach of the requirement.

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 40 (4) (c) SEPP (SHPD) - Maximum 1 storey within the rear 25% development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty*

Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 40 (4) (c) SEPP (SHPD) - Maximum 1 storey within the rear 25% development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the

development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part: the development will present generally as a single storey building due to the eastern building being at its lowest at the end of the site, and due to screen planting.

In detail, the rear section of apartment 3 equates to a 3m area of the 25% site back area which represents a 20% breach the control. In addition, the applicant notes the following:

- No. 15 Old Barrenjoey Road provides a two storey presentation in the nearby B2 Local Centre zone. This ensures the proposal would not be visually jarring.
- By nature, seniors housing provides functional requirements that will not necessarily look like

single dwellings. Despite this, the proposal provides complementary design features with a high degree of modulation and articulation.

- The proposal complies with a majority of other building controls under relevant policies.
- There are no adverse solar access impacts.
- The rear storey breach does not cause any additional privacy impact.
- The rear storey facilitates car parking so that less excavation is required.
- The additional storey is partially a function of the slope across the site.

Comment:

The Applicant's justification is generally supported. The elements that breach the first floor 25% rear setback standard will not give rise to unreasonable visual or amenity impacts, and provide a presentation more akin to one storey that is also compatible with surrounding properties.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Maximum 1 storey within the rear 25% development zone. An assessment against these objectives is provided below.

Objectives of development standard

CLAUSE 40 (4) (c) of the SEPP HSDP

While there is no specific objective to the standard within Clause 40(4) the primary purpose of the single storey limit within the rear 25% single storey zone is to limit the bulk and scale of a building to protect the amenity of the rear of adjoining properties. Placing built form into the rear of a property which generally forms part of its open space and adjoins the open space of other properties to the side and rear can have significant impacts on amenity not only from loss of solar access, privacy and views but also from the presence of increased or new building bulk and the removal of landscaping. An assessment of this purpose is provided below. In addition, given that there is no specific objective to Clause 40(4) (c) it is also worth assessing the development against the objectives as prescribed by Clause 4.3 - "Height of Building" of the PLEP to relevantly determine the suitability of the non-compliance associated with the proposed development.

The objectives of Clause 4.3 are as follows:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment:

The height of the proposed seniors housing development is compatible with surrounding and nearby developments which includes one and two storey dwellings as well as nearby businesses along Old Barrenjoey Road. The substantial modulation and articulation of the built form, including the breaking-up of the mass of the buildings (in to two parts) will ensure the development will match the desired character when viewed from the adjoining and nearby public spaces.

The development is consistent with this objective.

(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment:

The proposal is in close vicinity to a range of residential and business development that also has a range of height, bulk and scale. As such, the proposal for a two storey section of the proposed development at the rear, will be compatible with the height and scale of surrounding and nearby development.

(c) to minimise any overshadowing of neighbouring properties,

Comment:

The solar diagrams submitted with the application indicate that 100% of the apartments receive a minimum of 3 hours sunlight at winter solstice. Along with the compliant side setbacks to the upper level, this shows overshadowing to neighbouring properties is appropriately minimised.

(d) to allow for the reasonable sharing of views,

Comment:

The proposal provides compliant side setback to the upper level, and provides a compliant building height. This ensures that appropriate view corridors are provided through the site.

The development is consistent with this objective.

(e) to encourage buildings that are designed to respond sensitively to the natural topography

Comment:

The development involves two buildings that step down with the topography of the site. The basement car parking (at the location of the two storey breach) also minimises excavation to respond sensitively to the topography of the land.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Comment:

The substantial modulation and articulation of the built form, and compliant building height ensures that the built form would not have any unreasonable impact on the natural environment, heritage conservation areas and heritage items.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- ***To provide for the housing needs of the community within a low density residential environment.***

Comment:

The proposed seniors housing development achieves this objective as it provides for the ho

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

Comment:

Senior's housing provides for day to day needs of residents.

- ***To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.***

Comment:

The proposed development provides articulation and modulation of built form to ensure a low intensity and scale of development to be compatible with surrounding uses.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018 issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the 25% rear single storey zone SEPP Standard is assumed by the NBLPP as the development contravenes a numerical standard by more than 10%.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	4m (car parking) - 6.5m (apartment 1)	N/A	No (see comments)
Secondary Street Frontage	3.25m	3.25m	N/A	Yes (see comments)
Side building line (multi dwelling housing)	3m	3m	N/A	Yes
	3m	3.1m	N/A	Yes
Building envelope	3.5m	Within	N/A	Yes
	3.5m	Within	N/A	Yes
Landscaped area	50%	42% 520m ²	N/A	No (however, compliant with SEPP)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.3 Greywater Reuse	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	No	No
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	No
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	No	No
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.20 Undergrounding of Utility Services	Yes	Yes
C1.21 Seniors Housing	No	No
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	No	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	Yes	Yes
D1.13 Landscaped Area - General	No	Yes
D1.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

B5.7 Stormwater Management - On-Site Stormwater Detention

Council's Stormwater officer has provided the following comment with regard to OSD:

"With regard to the submitted stormwater management plans, the design proposes an on-site stormwater detention (OSD) tank under the habitable floor level of apartment 3 which is not acceptable. A review of the plans indicates that this tank could be relocated under the proposed terrace area of apartment 2 adjacent to the proposed pool. Amended plans detailing the relocation of the tank are to be

submitted for assessment."

B6.2 Internal Driveways

Council's Engineer has indicated that the requirements of Council's Traffic Engineer and Landscape officer would result in amendments that need further consideration by Council's Development Engineer, prior to a recommendation of approval with conditions.

C1.1 Landscaping

Council's Landscape officer does not support the application due to the lack of design to show that significant trees can be retained into the future. As such, the proposal does not provide an appropriate outcome for Landscaping on site.

C1.5 Visual Privacy

The proposed north, south and west elevations provide suitable design of openings and appropriate physical separation from neighbouring properties to ensure overlooking impact would be suitably minimised in these locations.

If granted approval, a condition would be recommended to require further screening to the eastern elevation given the proximity to residential development on the opposite side of Wickham Lane. It is also noted that Council's Landscape officer has concern in regard to the retention of Tree 33 which assists in providing screening of the eastern elevation.

C1.12 Waste and Recycling Facilities

Council's Waste officer has stated that the proposal does not meet Council's guidelines. In particular, the bin area is not of a sufficient size, does not have an accessible path and is not within an appropriate distance to the street.

C1.21 Seniors Housing

The proposed development fails to adequately address the outcomes of Part C.21. The specific outcomes of the control include:

- Visual bulk and scale of development is limited.
- Restricted footprint of development on site.
- Retention of the natural vegetation and facilitate planting of additional landscaping where possible.
- Achieve desired future character of the locality.
- Social mix of residents in the neighbourhood.
- Minimal cumulative impact from State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Controls

Cumulative Impact

Seniors housing developed in accordance with the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, outside the R3 Medium Density Residential and B4 Mixed Use zones shall:

-Be in keeping with the development of the surrounding area in regard to bulk, building height, scale

and character.

-Not result in such an accumulation of Seniors Housing developments to create a dominant social type in the surrounding neighbourhood.

-Not result in such an accumulation of Seniors Housing developments to create a dominant 'residential flat building' appearance in the neighbourhood.

In terms of the development's response to the outcomes and controls of this requirement, it is noted that there are not any Seniors housing developments within close proximity to the site. The appearance of this development in the nearby streets provides a presentation that is not overbearing or dominant due to sufficient stepping and articulation. This ensures an appropriate response and complementary nature with the surrounding residential development rather than a presentation of a dominant 'residential flat building style' appearance.

However, the impact on natural vegetation and the lack of opportunity for long term retention (as provided by Council's Landscape Officer) provides a circumstance in which the proposal does not appropriately protect the landscaped setting and character of the area.

The proposal is not considered to successfully address the outcomes and controls of this clause and this forms a reason for refusal for the proposed development.

C1.24 Public Road Reserve - Landscaping and Infrastructure

A variation to the requirement of a footpath along Sanders Lane is reasonable due to the , lack of width available for a footpath (particularly at the corner of Sanders Lane and Wickham Lane), tree removal required, and relatively low density of the housing (3 units).

D1.8 Front building line

Description of non-compliance

The proposal involves a varied front building line of 4m-6.5m, and a secondary building line of 3.25m. The numerical requirement is for front setbacks is 6.5m and 3.25m for the secondary street frontage (if the outcomes are achieved).

Merit Consideration

With regard to the consideration for the variation, the development is considered under the outcomes of the control below:

To achieve the desired future character of the Locality.

Comment

The proposal involves a well modulated and articulated built form. However, the concern raised by Council's Landscape officer in regard to tree retention, results in inadequate protection of the landscape setting (as identified as a key issue in the character statement).

The amenity of residential development adjoining a main road is maintained. (S)

Comment

The proposed development is sufficiently separated from surrounding roads to ensure amenity is appropriately maintained. Further, Council's Traffic engineer provides recommendations for changes that could ensure an appropriate relationship between the development and roads.

Vegetation is retained and enhanced to visually reduce the built form. (En)

Comment

Council's Landscape officer has provided concern with the retention of a tree in the secondary street frontage. As such, the proposal does not provide a sufficient design so that vegetation in this setback can be retained to reduce the built form.

Vehicle maneuvering in a forward direction is facilitated. (S)

Comment

The proposal involves swept paths which have been reviewed by Council's Traffic officer. As a result, Council's Traffic officer is satisfied with vehicle maneuvering.

To encourage attractive street frontages and improve pedestrian amenity.

Comment

The proposal will enhance the existing street frontage by providing a development with an appropriate bulk and style for the streetscape. However, concern with tree retention raised by Council's Landscape officer results in a situation in which an attractive street frontage may not be maintained.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.

Comment

The proposed front setbacks and building design appropriately responds to the spatial characteristics of the existing urban environment by providing sufficient parking and presentation of built form.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PDCA and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.13 Landscaped Area - General

The proposal provides a landscaped area of 42.8% which does not comply with the control under the DCP requiring 50%. However, Clause 50 of the SEPP HSPD provides that development cannot be refused on the basis of landscaped area if the proposal meets the development standard under the SEPP (30%).

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$49,983 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,998,272.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation

submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

This report provides an assessment of the application for the redevelopment of the site as a seniors housing development containing 3 units.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP (HSPD) 2004, SEPP 55, SEPP (Infrastructure), PLEP 2014, the relevant codes and policies of Council, the relevant provisions of the Pittwater 21 DCP.

Public Exhibition

The public exhibition of the DA resulted in a large response from the community. Objections to the proposed development include concerns relating to impact on trees, traffic, safety, impact on character, non-compliance with planning controls and non-compliance with SEPP HSPD.

The issues raised in the submissions have been addressed in the 'Public Exhibition & Submissions' section of this report.

While it is acknowledged that the Applicant has submitted some amended plans seeking to address the issues raised by Council in its referral comments and issues letter, the amendments were not sufficient to address issue raised by Council's Landscape Officer and Council's Waste Officer. Further to this, Council's Development Engineer has provided that further information is required to complete a full assessment. This includes information to show the amendments made by Council's Traffic engineer (through recommended conditions).

The assessment of the application against the provisions of SEPP (HSPD) has identified that the proposal is not satisfactory in relation to a number of the requirements of the SEPP.

Based on the assessment contained in this report, it is recommended that the Northern Beaches Local Planning Panel refuse the application for the reasons detailed within the recommendation of this assessment.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/1162 for the Demolition works and construction of three senior's living apartments with parking on land at Lot 33 DP 11462,27 Bellevue Avenue, AVALON BEACH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2014:

Clause 29 Character
Clause 31 Design of in-fill self-care housing
Clause 32 Design of residential development
Clause 33 Neighbourhood Amenity and streetscape
Clause 36 Stormwater
Clause 38 Accessibility
Clause 39 Waste Management
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B6.2 Internal Driveways of the Pittwater 21 Development Control Plan.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.1 Landscaping of the Pittwater 21 Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.12 Waste and Recycling Facilities of the Pittwater 21 Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.21 Seniors Housing of the Pittwater 21 Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1.8 Front building line of the Pittwater 21 Development Control Plan.



S H E D

1" = 40' (1:1600) A3
ASB 7315611516
13/03/2021 - CHRIS HAUGHTON 827

DRAWING TITLE
SITE PLAN

DRAWING NO.
1901-DA 070 B

SCALE
1:100 @ A1

N

PROJECT
27 BELLEVUE AVE | AVALON

STAGE
DA

CLIENT
CONSTRUCT BY DESIGN

DESIGNED BY
S H E D

DRAWN BY
S H E D

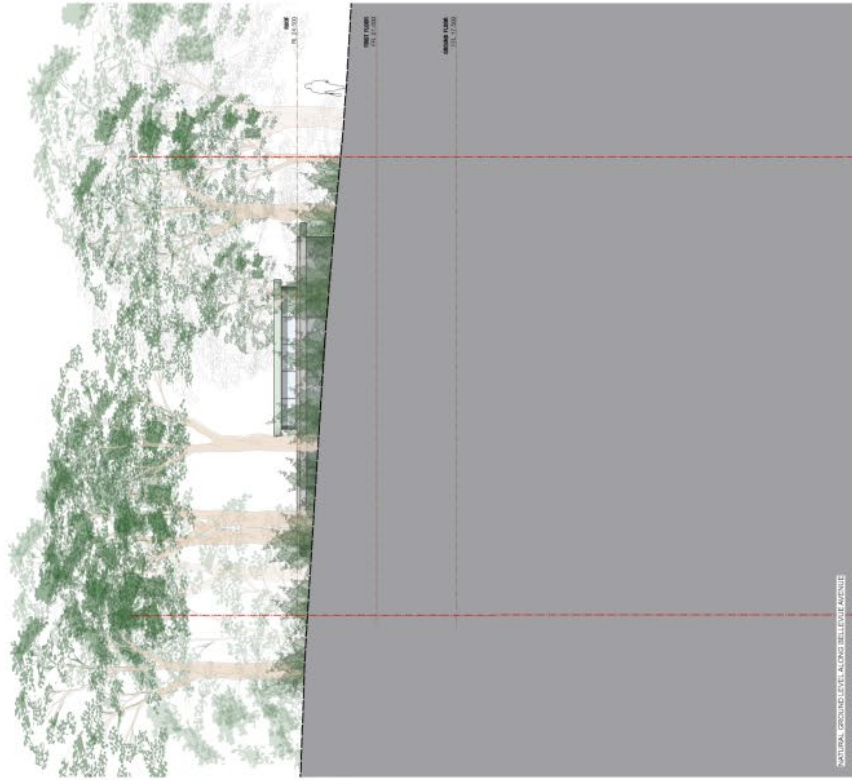
CHECKED BY
CH

TREES 25, 30, 39 RETAINED **PAVEMENTS ADDED/AMENDED**

ISSUE **DATE** **DESCRIPTION**

A **10/09/20** **ISSUED FOR DA**

B **01/03/21** **ISSUED FOR DA**



S H E D

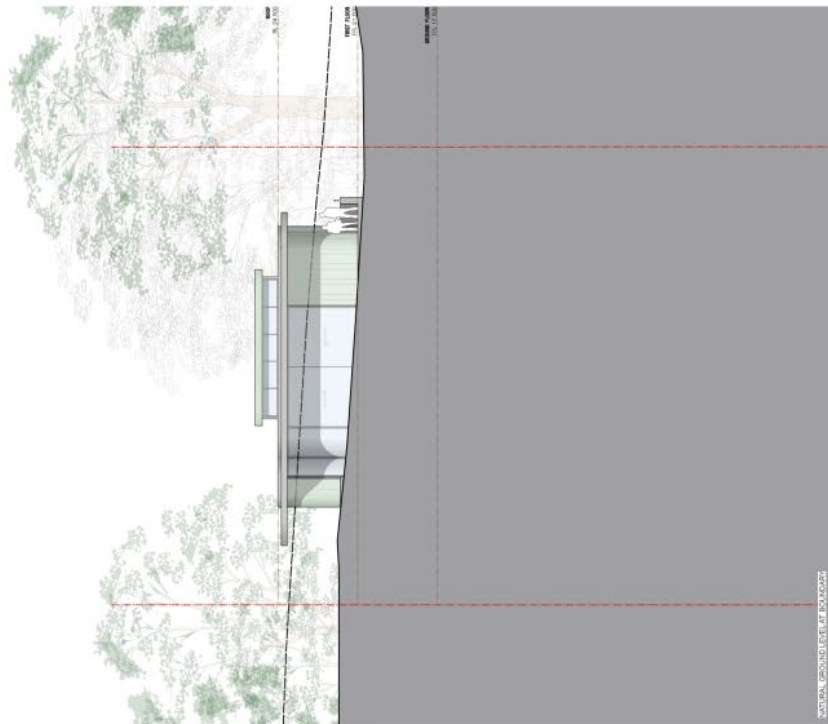
1" = 40' (1:1600) (A1)
ASB 7316517316
16/03/2021 - CHB/HAUGHTON 1927

DRAWING TITLE
WEST ELEVATION

DRAWING NO.
1901 - DA 300 A

SCALE
1:100 @ A1

PROJECT 27 BELLEVUE AVE | AVALON
STAGE DA
CLIENT DA
DESIGNED BY SHED
DRAWN BY SHED
CHECKED BY CH



ISSUE A
DATE 10/9/20
DESCRIPTION ISSUED FOR DA





SHED

1" = 48' (1:460) A3
AS/NZS 1546:2016
KCMARCH - CHRIS HAUGHTON 8/27

DRAWING TITLE
NORTH ELEVATION

DRAWING NO.
1901 - DA 302 B

SCALE
1:100 @ A3

PROJECT
27 BELLEVUE AVE | AVALON

STAGE
DA

CLIENT
CONSTRUCT BY DESIGN

DESIGNED BY
SHED

DRAWN BY
SHED

CHECKED BY
CH

WINDOWS AMENDED

ISSUE
A
B

DATE
10/09/20
01/03/21

DESCRIPTION
ISSUED FOR DA
ISSUED FOR DA



S H E D
1 - 48 PL 410 492 491
ASN 7316517516
XCMARCH - CHRIS HAUGRICH 8/27

DRAWING TITLE
EAST ELEVATION
DRAWING NO.
1901 - DA 303 B

SCALE
1:100 @ A3

PROJECT 27 BELLEVUE AVE | AVALON
STAGE DA
CLIENT DA
DESIGNED BY SHED
DRAWN BY SHED
CHECKED BY CH

ISSUE DATE DESCRIPTION
A 10/09/20 ISSUED FOR DA
B 01/03/21 ISSUED FOR DA

START AMENDED

4.0 NON PUBLIC MEETING ITEMS

ITEM 4.1	DA2020/1581 - 10 GOVERNMENT ROAD, BEACON HILL - DEMOLITION WORKS AND SUBDIVISION OF ONE LOT INTO TWO LOTS
AUTHORISING MANAGER	Rodney Piggott
TRIM FILE REF	2021/178633
ATTACHMENTS	1 Assessment Report 2 Subdivision Plan 3 Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Minimum Lot Size Development Standard of Clause 4.1 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/1581 for demolition works and subdivision of one lot into two lots at Lot J3 DP 370116, 10 Government Road, Beacon Hill subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1581
Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot J3 DP 370116, 10 Government Road BEACON HILL NSW 2100
Proposed Development:	Demolition works and subdivision of one lot into two lots
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	Glen Andrew David Sturits
Applicant:	Kym Boylan
Application Lodged:	19/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	15/02/2021 to 01/03/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 27.23%
Recommendation:	Approval
Estimated Cost of Works:	\$ 50,000.00

This report has been submitted to the Northern Beaches Local Planning Panel (NBLPP) for consideration of Development Application DA2020/1581 for demolition works and subdivision of one lot into two lots. The proposal does not involve construction of dwelling houses on proposed Lots 1 and 2.

The proposal involves variations to the Minimum Lot Size Development Standard, which prescribes a 600sqm minimum lot size. Lot 1 is 436.6sqm (599sqm when including the Right of Carriageway and passing bay) and Lot 2 is 534.2sqm. This represents respective variations from the Development Standard of 27.23% and 10.97% for Lots 1 and 2. Given the variations to the Minimum Lot Size standard are greater than 10%, the application must be referred to the NBLPP for determination.

The applicant has submitted a written request pursuant to Clause 4.6 of the Warringah Local Environmental Plan 2011 (WLEP 2011) and has demonstrated that compliance with the Minimum Lot

Size Development Standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variations.

The application was exhibited in accordance with the Northern Beaches Community Participation Plan and received no submissions.

When assessed on its merits, the proposed subdivision arrangement is found to be acceptable and consistent with the existing subdivision pattern along Government Road. Therefore, it is recommended that the NBLPP approve the application, subject to the conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for demolition of existing on-site structures and torrens title subdivision of one allotment into two allotments, including civil works.

The proposed lot sizes are as follows:

Lot 1: 436.6sqm (599sqm including the Right of Carriageway and passing bay).

Lot 2: 534.2sqm.

The application does not involve the construction of dwelling houses on the proposed lots.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.1 Minimum subdivision lot size
Warringah Development Control Plan - C1 Subdivision
Warringah Development Control Plan - C8 Demolition and Construction
Warringah Development Control Plan - C9 Waste Management

SITE DESCRIPTION

Property Description:	Lot J3 DP 370116 , 10 Government Road BEACON HILL NSW 2100
Detailed Site Description:	<p>The subject site consists of one allotment located on the western side of Government Road, Beacon Hill.</p> <p>The site is rectangular in shape with a frontage of 16.155m along Government Road and a depth of 70.155m. The site has a surveyed area of 1133.2sqm.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to the WLEP 2011 and accommodates a single storey dwelling house, comprising timber clad materials and a tiled hipped roof. Numerous detached outbuildings are also located on the site.</p> <p>The site is devoid of any significant vegetation and contains lawn areas and small shrubs throughout. There are no landscaped features that constitute threatened species.</p> <p>The site experiences a fall of approximately 3m that slopes from the rear boundary towards the south-eastern front corner.</p> <p>The site is not burdened with any natural constraints or restrictive covenants.</p> <p>Detailed Description of Adjoining and Surrounding Development</p> <p>The surrounding environment largely comprises detached low density residential development 1-2 storeys in height, although there is an attached dual occupancy located approximately 30m to the north (279 Warringah Road). A number of the larger allotments on the western side of Government Road have been subdivided in a similar manner to the proposed development.</p>

Map:



SITE HISTORY

The site has been used for residential purposes for an extended period of time. A search of Council's records has revealed no recent applications relevant to this particular Development Application.

Application History

The Assessment Officer undertook a site visit at the subject site and examined the surrounding environment on 3 February 2021.

The application has been exhibited as "Demolition works and subdivision of one lot into two lots". The Statement of Environmental Effects submitted with this application indicated that the existing dwelling house on the site would be demolished (among other existing structure), however the original subdivision plan indicated that this would be retained. Following discussions with the applicant that revealed that the existing dwelling would be demolished, Council requested that an amended subdivision plan be submitted to indicate that the existing dwelling would be demolished. The amended subdivision plan was subsequently submitted to Council's satisfaction, which also included indicative 150sqm building footprints on Lots 1 and 2 in accordance with the WDCP 2011 subdivision provision. The amended documentation was re-notified for an additional 14 days.

On 3 March 2021 the applicant submitted an amended subdivision plan including the provision of a 2m x 2m landscaped area within the south-eastern front corner of Lot 1. This was reviewed by Council's Development Engineer and no objections were raised. The amended plan has been considered against Council's relevant controls and is found to be acceptable. The incorporation of additional landscaping will result in a reduced environmental impact and therefore, the amended plan was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the</p>

Section 4.15 Matters for Consideration'	Comments
	submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 15/02/2021 to 01/03/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The plans indicate the proposal is for subdivision and construction of access driveway along the southern boundary.</p> <p>No significant landscape features are indicated to be affected by the proposed works. Requirements for tree planting can be conditioned when applications are made for dwellings on the proposed lots if the</p>

Internal Referral Body	Comments
	DA is to be approved. No objections are raised subject to conditions.
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity

power line.

Comment:

The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	Lot 1: 600sqm	436.6sqm	27.23%	No
	Lot 2: 600sqm	534.2sqm	10.97%	No

Note: The driveway and passing bay have been excluded from the lot size calculations from Lot 1.

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires consent	Yes
4.1 Minimum subdivision lot size	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Minimum Subdivision Lot Size
Requirement:	600sqm
Proposed:	Lot 1: 436.6sqm (excluding Right of Carriageway and passing bay)

	Lot 2: 534.2sqm
Percentage variation to requirement:	Lot 1: 27.23% Lot 2: 10.97%

The proposed subdivision results in variations to Clause 4.1 of the WLEP 2011. It is important to note that the lot size calculation for Lot 1 has excluded the Right of Carriageway and passing bay that intersect the southern side of the proposed allotment. Whilst the passing bay is not currently included in the concept Right of Carriageway, Council's Development Engineer has included a condition that requires a Right of Carriageway to be created and include all vehicular access and manoeuvring areas, which includes the passing bay. Therefore, Council has excluded the passing bay from the lot size calculations for Lot 1. Council's calculations for Lot 1 correlate with the calculations expressed within the applicant's Clause 4.6 written request submitted in support of this application. When including the Right of Carriageway and passing bay in the Lot 1 calculations, the area of Lot 1 is 599sqm.

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size Development Standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

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

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.1 - Minimum subdivision lot size Development Standard is not expressly excluded from the operation of this clause.

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- *"There are a vast numbers of examples of sites of the same area as proposed in the immediate vicinity and the proposed development will be consistent. This includes Government Road and the areas to the immediate east and west with street including Warringah Road, Earl Street, Mary Street and Courtley Road, all having sites with comparable lot areas.*
- *The reduced sized lots have been the subject of very recent precedent with the neighbouring 18 Government Road, Beacon Hill, being the subject of a 2-lot consent (DA2019/1132) in 2019 for lots with areas of: Lot 1: 469.1m² Site Area and Lot 2: 600m² (457.4m² ex ROW)*
- *The setting and context with similar lot sizes demonstrates that the varied lot size is reasonable and that it is consistent with clause 1.3(c) and (d).*
- *The proposed new lots have ample area to allow for dwellings of a consistent size as those in the immediate area, compliant with Council controls.*
- *The new lots can easily provide access, services and landscaping on the site, as is demonstrated through ample areas available once a building envelope is provided.*
- *Complaint access can be provided with a Right of Way, ensuring safe vehicular access to the proposed lots.*
- *The availability to provide appropriate dwelling envelopes and development opportunities demonstrates fulfillment of clause 1.3 (b) and (c).*
- *The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone allowing for future development opportunities of appropriate and reasonable housing suitable for the local community. Compliance with the lot size development standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.*
- *The non-compliance lot size allowing for subdivision and the ability to eventually develop each lot, will not impact on the natural environment. Council DCP landscape controls are still relevant and no area is lost or impacted through the variation, with the two proposed lots still able to ensure ample landscape area satisfying cl1.3(b). The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis.*
- *The variation to the lot size as detailed above will have a positive social impact allowing for utilizing of the site for 2 dwelling (sic) and improving access to the varied housing in the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.*
- *The variation to the lot size as detailed above will have positive economic impacts for the site and the local area allowing for additional housing in close proximity to services satisfying Cl1.3 (b) and accordingly refusal of the development based on this reason would be unreasonable.*
- *The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in this report.*
- *The variation does not result in an atypical lot layout considerate of the surrounds and will allow, in the future, for the design of two new dwellings appropriate to the two new lots. The total built area and landscaped area required will unchanged (sic).*

Comment:

It is agreed that the proposed lots would be keeping with the size of lots within the immediate vicinity of the site, noting that properties 14/14A, 18/18A and 22/22A on the western side of the street have been subdivided in a similar arrangement to the proposed subdivision. Properties 14/14A and 22/22A were subdivided in the 1990's, whilst the subdivision arrangement at 18/18A was approved by the Northern Beaches Local Planning Panel in 2018. Other surrounding lots on the eastern side of Government Road (opposite the site) are of a size and shape that is similar to the proposal.

It is also accepted that the proposed allotments are capable of accommodating future development which is compatible with the density of existing and future development within the locality. The 150sqm indicative building footprints on the concept subdivision plan indicates that the resulting allotments could accommodate for a reasonable development that aligns with Council's current planning controls.

It is also agreed that the resulting allotments will provide appropriate access and services on the site, noting that Council's Development Engineer has reviewed the development in this regard and raised no objections and included appropriate conditions to ensure this.

It is also accepted that the variation to the lot size standard will not result in a subdivision arrangement that is atypical to the character of the area, given the size and configuration of the proposed allotments is consistent with surrounding subdivision pattern.

Council also agrees that the proposal does not constitute overdevelopment and that the objectives of Clause 4.1 of the WLEP 2011 and the objectives of the R2 zone are achieved, notwithstanding the numeric variation to the lot size provision. This is discussed in further detail below.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Minimum subdivision lot size Development Standard and the Objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the WLEP 2011 are:

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

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality.

Comment:

As noted above, the size and configuration of the proposed allotments are consistent with properties 14/14A, 18/18A and 22/22A on the western side of Government Road. Moreover, the proposed subdivision arrangement is of a size and shape that is similar to existing allotments on the eastern side of the street (opposite the site), which are generally approximately 470sqm in area and rectangular in shape. Based on the above, it is reasonable to conclude that the proposed allotments are consistent with the pattern, size and configuration of existing allotments in the locality.

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development.

Comment:

The subject site is located within the R2 Low Density Residential zone pursuant to the WLEP 2011. Commercial and industrial development is prohibited on this site and surrounding sites. Therefore, this objective is not of relevance.

(c) to protect the integrity of land holding patterns in rural localities against fragmentation.

Comment:

The site is not zoned for rural purposes and therefore, this objective is not relevant.

(d) to achieve low intensity of land use in localities of environmental significance.

Comment:

The site and surrounding area is not located within an environmentally sensitive area. Therefore, this objective is not relevant.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland.

Comment:

The site is not located within a bushfire prone area.

(f) to protect and enhance existing remnant bushland.

Comment:

The site does not contain any existing remnant bushland.

(g) to retain and protect existing significant natural landscape features.

Comment:

There are no significant natural landscape features on the site. Any new dwellings proposed under future applications will have to comply with Clause E6 'Retaining unique environmental features' of the WDCP 2011.

(h) to manage biodiversity.

Comment:

The site is located within the R2 Low Density Residential zone and does not have significant value in terms of biodiversity.

(i) to provide for appropriate stormwater management and sewer infrastructure.

Comment:

Council's Development Engineer has reviewed the proposal with respect to stormwater and sewer infrastructure and raised no objections. Suitable conditions have been included with this consent to ensure the appropriate provision of utility infrastructure.

Zone Objectives

The underlying objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposal will provide an additional allotment to cater 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.*

Comment:

The proposal will not prevent other sites from providing facilities or services to meet the day to day needs of the residents within the locality.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The indicative building footprints on Lots 1 and 2 indicate that reasonably sized dwellings could be accommodated on the proposed allotments in accordance with Council's current planning guidelines.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone and the objectives of Clause 4.1 of the WLEP 2011.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Minimum Subdivision Lot Size Development Standard is assumed by the Local Planning Panel.

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C1 Subdivision	No	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	No	Yes
C9 Waste Management	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	R2 Low Density Residential zone requirements:	<u>Lot 1</u> a) 16.155m (incl. driveway) and combined frontage of 11.21m	No (Lot 1 width excluding

	<p>Proposed new allotments:</p> <p>a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m²</p>	<p>(excl. driveway) - does not comply when excl. driveway</p> <p>b) 37.085m - complies c) 150sqm footprint - complies</p> <p><u>Lot 2</u></p> <p>a) 16.155m - complies b) 33.07m - complies c) 150sqm footprint - complies</p>	driveway)
Access	<p>Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.</p> <p>Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.</p> <p>Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.</p> <p>Driveways in excess of 200 metres will not be allowed for residential development.</p> <p>Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.</p> <p>Passing bays should have regard to sight conditions and minimise vehicular conflict.</p> <p>Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the</p>	<p>Motor vehicle access from Government Road is provided to Lots 1 and 2.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles is not inhibited.</p> <p>The internal driveway meets the vehicular access grades.</p> <p>A passing bay has been provided.</p> <p>A concept Right of Carriageway has been provided and Council's Development Engineer is satisfied that it meets Council's requirements. Suitable conditions have been included to ensure a Right of Carriageway and Easement for Drainage is created pursuant to the provisions of Section 88B of the Conveyancing Act.</p>	Yes

	<p>passing/turning bay.</p> <p>Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.</p> <p>Width of accessways are to be as follows:</p> <table><tr><th>Number of lots to be serviced</th><th>Width of clear constructed accessway (m)</th></tr><tr><td>1 - 5</td><td>3.5</td></tr><tr><td>6 - 10</td><td>5.0</td></tr><tr><td>in excess of 10</td><td>Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)</td></tr></table> <p>Provision of services in rights of carriageway are as follows:</p> <table><tr><th>Number of lots to be serviced</th><th>Additional width to be provided in Right of Carriageway (m)</th></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>	Number of lots to be serviced	Width of clear constructed accessway (m)	1 - 5	3.5	6 - 10	5.0	in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)	Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)	Up to 3 lots	0.5	4 or more lots	1.0		
Number of lots to be serviced	Width of clear constructed accessway (m)																
1 - 5	3.5																
6 - 10	5.0																
in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)																
Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)																
Up to 3 lots	0.5																
4 or more lots	1.0																
Design and construction	<p>All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and</p>	<p>The proposal has been reviewed by Council's Development Engineer who raises no objections to the approval, subject to conditions.</p>	<p>Yes</p>														

	<p>Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards.</p> <p>Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.</p>		
Drainage	<p>Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.</p>	<p>Lots 1 and 2 will have the ability to drain stormwater to Government Road. Lot 2 will go so through a drainage easement through Lot 1.</p>	Yes
Restrictions	<p>Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.</p>	<p>Appropriate conditions have been included in the consent.</p>	Yes
Environmentally constrained land	<p>In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment.</p> <p>Where possible, lot boundaries should utilise natural land features such as creeks,</p>	<p>The site is not environmentally constrained.</p>	Yes

	escarpments and rock outcrops.		
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	The site is not bushfire prone.	Yes

Description of non-compliance

Clause C1 of the WDCP 2011 requires new allotments to be at least 13m wide. Lot 1 is 11.21m in width when excluding the driveway along the southern boundary, which fails to meet the numeric requirement. It is important to note that when including the driveway Lot 1 is 16.155m in width, which complies with this control.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

- *To regulate the density of development.*

Comment:

The indicative 150sqm building footprints depicted on the subdivision plan indicates that the resulting allotments could comfortably accommodate reasonably sized dwellings that would comply with Council's relevant planning controls. Therefore, Council can be satisfied that the minor lot width non-compliance will not prevent a suitable dwelling from being constructed on Lots 1 and 2. Overall, the proposal meets this objective.

- *To limit the impact of new development and to protect the natural landscape and topography.*

Comment:

The site does not contain any significant natural features. Any new dwellings proposed under future applications will have to comply with Clause E6 'Retaining unique environmental features' of the WDCP 2011.

- *To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.*

Comment:

The indicative 150sqm building footprints submitted with this application indicate that Lots 1 and 2 could easily accommodate a dwelling that complies with Council's relevant planning controls. The amended subdivision plan has included a 2m x 2m landscaped area in the front south-eastern corner of Lot 1, which will avoid a 'gun barrel' impervious driveway and provides a perceived landscaped strip along the entire southern side boundary when viewed from the street frontage.

- *To maximise and protect solar access for each dwelling.*

Comment:

Lots 1 and 2 will receive access to adequate solar access. Any new development on either lot will need to comply with Clause D6 'Access to Sunlight' of the WDCP 2011.

- *To maximise the use of existing infrastructure.*

Comment:

Suitable conditions have been included with this consent to ensure both allotments are serviced by water, electricity, telephone and gas.

- *To protect the amenity of adjoining properties.*

Comment:

The works do not involve the construction of dwellings on Lots 1 or 2. Nevertheless, it is considered that a well designed, fully compliant dwelling on the resulting allotments will be able to protect the amenity of adjoining properties, particular the southern site (12 Government Road).

- *To minimise the risk from potential hazards including bushfires, land slip and flooding.*

Comment:

The site is not subject to significant environmental constraints. The site is located within 'Area A' on the WLEP 2011 Landslip Risk Map, which is the lowest risk category being slopes less than 5 degrees.

Concluding Remarks

Having regard to the above assessment, it is concluded that the proposed development is consistent with the objectives of this control. Therefore, the minor lot width non-compliance is supported on merit, subject to conditions.

C8 Demolition and Construction

The Waste Management Plan submitted with this application does not indicate the location of the offsite disposal or recycling outlet, nor does it depict the quantiles of waste generated from the demolition works. Therefore, a suitable condition has been included with this consent requiring the applicant to prepare an amended Waste Management Plan that specifies the location of the off-site disposal or recycling outlet, in accordance with Council's Waste Management Guidelines.

C9 Waste Management

The Waste Management Plan submitted with this application does not indicate the location of the offsite disposal or recycling outlet, nor does it depict the quantiles of waste generated from the demolition works. Therefore, a suitable condition has been included with this consent requiring the applicant to prepare an amended Waste Management Plan that specifies the location of the off-site disposal or recycling outlet, in accordance with Council's Waste Management Guidelines.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.1 Minimum Subdivision Lot Size has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposal involves variations to the Minimum Lot Size Development Standard, which prescribes a 600sqm minimum lot size. Lot 1 is 436.6sqm (599sqm when including the Right of Carriageway and passing bays) and Lot 2 is 534.2sqm. This represents respective variations from the Development Standard of 27.23% and 10.97% for Lots 1 and 2.

Despite the variations to the Development Standard, the proposed subdivision arrangement is consistent with properties 14/14A, 18/18A and 22/22A on the western side of Government Road and is consistent with the size and configuration of the majority of allotments on the eastern side of the street (opposite the site).

The applicant has submitted a written request pursuant to Clause 4.6 of the Warringah Local Environmental Plan 2011 (WLEP 2011) and has demonstrated that compliance with the Minimum Lot Size Development Standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variations.

Therefore, it is recommended that the NBLPP approve the application, subject to the conditions attached to this report.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary Clause 4.1 Minimum Subdivision Lot Size Development Standard pursuant to Clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/1581 for Demolition works and subdivision of one lot into two lots on land at Lot J3 DP 370116, 10 Government Road, BEACON HILL, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Sheet No. 1 - Plan Showing Proposed Subdivision of Lot J3 in DP 370116 "No. 10" Government Road, Beacon Hill	not dated	Intrax Consulting Group

Engineering Plans		
Drawing No.	Dated	Prepared By
C02 (Revision A) - Stormwater and Driveway Levels	26/11/2020	Intrax Consulting Group
C03 (Revision A) - Longsection	26/11/2020	Intrax Consulting Group

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	not dated

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. No Approval for Land Use

No approval is granted under this Development Consent for any land use. A separate Development Application must be submitted to Council for approval prior to the use of the premises.

Reason: To ensure compliance with the relevant Local Environmental Plan.

4. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the

development consent must, at the person's own expense:

- (i) protect and support the adjoining premises from possible damage from the excavation, and
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

5. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is

required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming

- pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

6. Security Bond

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

7. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

8. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

9. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with Council's Waste Management Guidelines.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

10. **Tree protection**

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

12. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

13. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

14. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE**

15. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from

demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

**CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA
SUBDIVISION OR SUBDIVISION CERTIFICATE**

16. Provision of Services for Subdivision

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

17. Right of Carriageway

The Applicant shall create a right of carriageway (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument, to include all vehicular access and manoeuvring areas. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

18. Sydney Water Compliance Certification

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

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

19. Easement for Drainage

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

20. **Release of Subdivision Certificate**

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

21. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

22. **Demolition of Buildings**

Prior to the issue of a subdivision certificate, all existing buildings on the site shall be demolished.

Evidence of the demolition of buildings shall be provided to the Principle Certifying Authority prior to the issue of a subdivision certificate.

Reason: To ensure all works are complete prior to the subdivision of the land.

23. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure proper management of land.

24. **Subdivision Works Certificate**

A Subdivision Works Certificate is to be approved by Certifying Authority for the provision of engineering works.

Engineering plans for the subdivision works within this development consent are to be submitted to the Certifying Authority for approval under Section 6.13 of the Environmental Planning and Assessment Act 1979.

Civil Engineering plans for the subdivision works are to be designed in accordance with the Council's specification for engineering works – AUS-SPEC #1. The plans shall be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering. The design must include the following information:

1. driveway and passing bays in accordance with the concept plan prepared by Intrax housing, Ref No: 153835 and dated 26/11/2020 (inclusive of any conditions of consent requiring amendments to the driveway or right of carriageway).

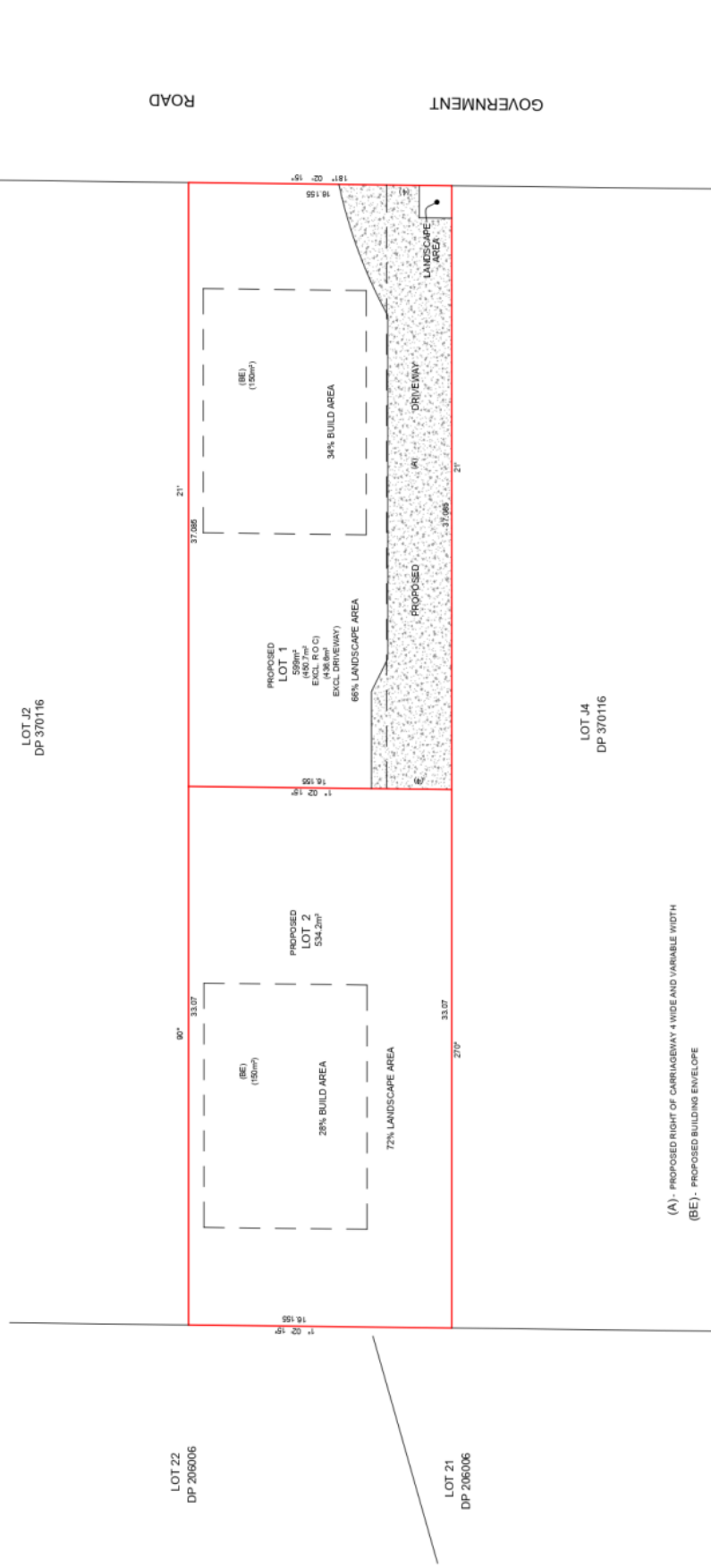
2. internal drainage in accordance with the concept plan prepared by Intrax housing, Ref No: 153835 and dated 26/11/2020.

The Subdivision Works Certificate must be supported by engineering plans, calculations, specification or any certification relied upon.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specifications.

NOTE: AREAS AND DIMENSIONS ARE SUBJECT TO FINAL SURVEY AND COUNCIL APPROVAL

SURVEY NOTES:
THIS PLAN HAS BEEN PREPARED WITH THE INTENTION OF PROVIDING AN INDICATIVE DESIGN TO ACCOMPANY A DEVELOPMENT APPLICATION TO CENTRAL COAST COUNCIL.
THE INFORMATION DEPICTED ON THIS PLAN IS NOT TO BE USED FOR ANY REASON OTHER THAN WHAT IS STATED ABOVE.
ALL DIMENSIONS, AREAS AND TOTAL NUMBER OF LOTS SHOWN ON THIS PLAN ARE APPROXIMATE AND SUBJECT TO FIELD SURVEY AND ALSO TO THE REQUIREMENTS OF COUNCIL AND ANY OTHER AUTHORITY WHICH MAY HAVE REQUIREMENTS UNDER ANY RELEVANT LEGISLATION.
IN PARTICULAR, NO RELIANCE SHOULD BE PLACED ON THE INFORMATION ON THIS PLAN FOR DETAILED DESIGN OR FOR ANY FINANCIAL DEALINGS INVOLVING THE LAND.
INTRAX CONSULTING GROUP THEREFORE DISCLAIMS ANY LIABILITY FOR ANY LOSS OR DAMAGE WHATSOEVER OR OTHER THAN AS A DOCUMENT PREPARED FOR THE SOLE PURPOSE OF ACCOMPANYING AN APPLICATION TO COUNCIL FOR DEVELOPMENT AND WHICH MAY BE SUBJECT TO ALTERATION FOR REASONS BEYOND THE CONTROL OF INTRAX CONSULTING GROUP.
UNLESS STAMPED BY COUNCIL, THIS PLAN IS NOT A PLAN OF AN APPROVED DEVELOPMENT.
THIS NOTE IS AN INTEGRAL PART OF THE PLAN.



INTRAX <small>18885 SUR PROJ BUL 10 GOVERNMENT RD BEACON HILL - REV</small>		PLAN SHOWING PROPOSED SUBDIVISION OF LOT J3 IN DP 370116 1/10.10' GOVERNMENT ROAD, BEACON HILL		SHEET No. 1 OF 1 DATE: 17/03/2021 REV: 1
LOT No. SECTION PLANNING SUBURB LGA PARISH COUNTY	LOT No. SECTION PLANNING SUBURB LGA PARISH COUNTY	LOT No. SECTION PLANNING SUBURB LGA PARISH COUNTY	LOT No. SECTION PLANNING SUBURB LGA PARISH COUNTY	LOT No. SECTION PLANNING SUBURB LGA PARISH COUNTY
DP 370116 BEACON HILL NORTHERN BEACHES MANLY COVE CUMBERLAND		DP 370116 BEACON HILL NORTHERN BEACHES MANLY COVE CUMBERLAND		DP 370116 BEACON HILL NORTHERN BEACHES MANLY COVE CUMBERLAND
0 1 2 4 6 8 10 REDUCTION RATIO 1:100 @ A1 & 1:200 @ A3		0 1 2 4 6 8 10 REDUCTION RATIO 1:100 @ A1 & 1:200 @ A3		0 1 2 4 6 8 10 REDUCTION RATIO 1:100 @ A1 & 1:200 @ A3

Appendix One – Clause 4.6 Exceptions to Development Standards

10 Government Road, Beacon Hill

Clause 4.1 – Minimum Lot Size

Clause 4.6 of the Warringah Local Environmental Plan 2011 (WLEP 2011) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* being:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The aims and objectives of Warringah LEP 2011 Clause 4.6 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.*

Under Clause 4.6(3) and (4) of the WLEP 2011, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

T 02-89010741 | E info@watermarkplanning.com.au | W watermarkplanning.com.au



(4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

It is of interest that the consent authority specifies a number of development standards that cannot be varied under Clause 4.6, listed in Clause 4.6(8). Clause 4.1 – Minimum Lot Size, is not one of the standards excluded, it must therefore be assumed that the standard for minimum lot size, is one of the development standards that can have an appropriate degree of flexibility applied under clause 4.6.

1. Environmental Planning Instrument Details (Warringah LEP 2011)

1.1 What is the name of the environmental planning instrument that applies to the land?

Warringah Local Environmental Plan 2011 (WLEP 2011)

1.2 What is the zoning of the land?

R2 – Low Density Residential

1.3 What are the objectives of the zone?

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

1.4 What is the development standard being varied?

Cl 4.1 of the Warringah Local Environmental Plan 2011, Minimum subdivision lot size.

1.5 Under what clause is the development standard listed in the environmental planning instrument?

Cl 4.1 of the Warringah Local Environmental Plan 2011

1.6 What are the objectives of the development standard?

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

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,

(c) to protect the integrity of land holding patterns in rural localities against fragmentation,



- (d) to achieve low intensity of land use in localities of environmental significance,*
- (e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,*
- (f) to protect and enhance existing remnant bushland,*
- (g) to retain and protect existing significant natural landscape features,*
- (h) to manage biodiversity,*
- (i) to provide for appropriate stormwater management and sewer infrastructure.*

1.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the minimum subdivision lot size of buildings development standard applicable to the subject site is a minimum of 600m².

1.8 What is proposed numeric value of the development standard in your development application?

The numeric value of the development in this development standard is a minimum of 600m².

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

(Lot 1): 436.6 m² (Excluding ROW)

(Lot 2): 534.2m²

The percentage variation sought is:

Lot 1	27.2%
Lot 2	10.97%



2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
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 (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe v Pittwater* [2007] NSW LEC 827 and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);



3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. *The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;*
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that 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.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to *four2five*, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.



3. Consideration

The following section addresses the provisions of clause 4.6 of the WLEP 2011 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered: b

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - *Wehbe v Pittwater*

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The objectives of the standard are:

- (a) *to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,*

The proposed development for the subdivision of one lot into two lots via a Torren title subdivision is in keeping with the surrounding locality. This can be seen with a recent consent provided by Council for 18 Government Road, Beacon Hill.

Below is an aerial photograph which shows similar subdivision at 14, 18 and 22 Government Road. In addition to this it is clear that the proposed lot sizes are consistent with the majority of those surrounding.



(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,

N/A

(c) to protect the integrity of land holding patterns in rural localities against fragmentation,



N/A

(d) to achieve low intensity of land use in localities of environmental significance,

The development is not located in an environmentally significant zone.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,

The site is not impacted by bushfire.

(f) to protect and enhance existing remnant bushland,

The site is not impacted by remnant bushland.

(g) to retain and protect existing significant natural landscape features,

The proposed development for the will not impact on any significant landscape features.

(h) to manage biodiversity,

The proposed development will have no impact on biodiversity with the subject site unaffected.

(i) to provide for appropriate stormwater management and sewer infrastructure.

The proposed subdivision has appropriately design for compliant stormwater disposal. Te site has existing sewer connection.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).

This exception to development standards request does not rely on this reason.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).

This exception to development standards request does not rely on this reason.

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 (Fourth Way).

This exception to development standards request does not rely on this reason.

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).

This exception to development standards request does not rely on this reason.



This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the minimum lot size control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*.

In particular:

Context

- There are a vast numbers of examples of sites of the same area as proposed in the immediate vicinity and the proposed development will be consistent. This includes Government Road and the areas to the immediate east and west with street including Warringah Road, Earl Street, Mary Street and Courtley Road, all having sites with comparable lot areas. See the list below of similarly sized lots.

Neighbouring Lots	Site Area (m ²)
7 Government Road, Beacon Hill	470
11 Government Road, Beacon Hill	450
14 Government Road, Beacon Hill	404
14a Government Road, Beacon Hill	534
15 Government Road, Beacon Hill	489
17 Government Road, Beacon Hill	459
18 Government Road, Beacon Hill	469
18a Government Road, Beacon Hill	457
19 Government Road, Beacon Hill	471
21 Government Road, beacon Hill	448
22 Government Road, beacon Hill	480
22a Government Road, beacon Hill	463
25 Government Road, Beacon Hill	457
1 Mary Street, Beacon Hill	461
2 Mary Street, Beacon Hill	468
3 Mary Street, Beacon Hill	468
4 Mary Street, Beacon Hill	460
2 Gertrude Street, Beacon Hill	457
4 Gertrude Street, Beacon Hill	460
1 Earl Street, Beacon Hill	465



3 Earl Street, Beacon Hill	465
18 Courtley Road, Beacon Hill	551
21 Courtley Road, Beacon Hill	591
27 Courtley Road, Beacon Hill	581
29 Courtley Road, Beacon Hill	567
31 Courtley Road, Beacon Hill	583
283 Warringah Road, Beacon Hill	402
283a Warringah Road, Beacon Hill	301
289 Warringah Road, Beacon Hill	323
289a Warringah Road, Beacon Hill	297

- The reduced sized lots have been the subject of very recent precedent with the neighboring 18 Government Road, Beacon Hill, being the subject of a 2-lot consent (DA2019/1132) in 2019 for lots with areas of:
Lot 1: 469.1m² Site Area
Lot 2: 600m² (457.4m² ex ROW)
- The setting and context with similar lot sizes demonstrates that the varied lot size is reasonable and that it is consistent with clause 1.3(c) and (d)

Future Development

- The proposed new lots have ample area to allow for dwellings of a consistent size as those in the immediate area, compliant with Council controls. This is demonstrated by the envelopes provide on the plans and by a view of the locality which has many similar sized lots.
- The new lots can easily provide access, services and landscaping on the site, as is demonstrated through the ample area available once a building envelope is provided.
- Compliant access can be provided with a Right of Way, ensuring safe vehicular access to the proposed lots.
- The ability to provide appropriate dwelling envelopes and development opportunities demonstrates fulfillment of clause 1.3(b) and (c).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone allowing for future development opportunities of appropriate and reasonable housing suitable for the local community. Compliance with the lot size development standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.



Natural Environment

- The non-compliant lot size allowing for subdivision and the ability to eventually develop each lot, will not impact on the natural environment. Council DCP landscape controls are still relevant and no area is lost or impacted through the variation, with the two proposed lots still able to ensure ample landscape area satisfying Cl1.3(b). The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis.

Social and economic welfare

- The variation to the lot size as detailed above will have a positive social impact allowing for utilisation of the site for 2 dwelling and improving access to varied housing in the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.
- The variation to lot size as detailed above will have positive economic impacts for the site and the local area allowing for additional housing in close proximity to services satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.
- The variation does not result in an atypical lot layout considerate of the surrounds and will allow, in the future, for the design of two new dwellings appropriate to the two new lots. The total built area and landscaped area required will unchanged.

The variation to the lot size and the discussion above reflects the unique circumstances for the subject site and proposed development, including an assurance of lots with ample area, access and design opportunities.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the lot size variation.



3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

Zone – R2 Low Density Residential

- *To provide for the housing needs of the community within a low density residential environment.*

Consistent. The proposal is for residential lots.

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

Not relevant. The proposal is for a residential lots.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Consistent. The proposal is for the for the demolition of the existing house and Torrens Title subdivision of one lot into two lots. The new lots will allow for positive future development.

Despite the proposal seeking an exception to the minimum lot size of both lots, the percentage variation will have minimal effect to the lots' future dwellings, with the lot size still capable of meeting the residential controls.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,



- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Strict compliance with the 600 metre lot size development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, protecting the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats and promoting good design and amenity of the built environment.*

The proposed development for a 2 lot subdivision, on land zoned R2 – Low Density Residential is appropriate and reasonable for the following reasons:

- There are a vast number of examples of sites of the same area as proposed in the immediate vicinity.
- The new lots will allow for dwellings of a consistent size as those in the immediate area, compliant with Council controls.
- Recent precedent existing with a lot of very similar size being subdivided at no. 18 Government Road, Beacon Hill.
- The objectives of the R2 zone can be met through the subdivision of the new lots.
- The new lots can easily provide access, services and landscaping on the site.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6.

The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.



The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the lot size variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.1, and therefore the merits of the proposed variation are considered to be worthy of approval.

ITEM 4.2

**DA2020/1386 - 31 OXFORD FALLS ROAD, BEACON HILL -
SUBDIVISION OF ONE LOT INTO TWO, ALTERATION TO THE
EXISTING DWELLING, NEW DRIVEWAY AND PARKING**

AUTHORISING MANAGER **Rodney Piggott**

TRIM FILE REF **2021/178891**

ATTACHMENTS	1 Assessment Report
	2 Site Plan, Subdivision Plan & Elevations
	3 Report - Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Minimum Lot Size Development Standard of Clause 4.1 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/1386 for subdivision of one lot into two, alteration to the existing dwelling, new driveway and parking at Lot 1 DP 661034, 31 Oxford Falls Road, Beacon Hill subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1386
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 1 DP 661034, 31 Oxford Falls Road BEACON HILL NSW 2100
Proposed Development:	Subdivision of one lot into two, alteration to the existing dwelling, new driveway and parking
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Henrik Valentin Tommasina Lisa Valentin
Applicant:	Henrik Valentin Tommasina Lisa Valentin
Application Lodged:	30/10/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	11/11/2020 to 25/11/2020
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 20%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 32,750.00

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application DA2020/1386 for subdivision of one lot into two, alteration to the existing dwelling, new driveway and parking. The application is referred to the Northern Beaches Local Planning Panel for determination due to the proposed non-compliance with the minimum subdivision lot size exceeding 10%.

The proposed subdivision of the existing allotment will result in the following lot sizes:
Proposed Lot 1 (rear lot): 520.7m² (13.2% variation)

Proposed Lot 2 (front lot): 479.7m², excluding right of carriageway (20% variation)

The applicant has submitted a request to vary the minimum subdivision lot size development standard under Clause 4.6 of WLEP 2011. The Clause 4.6 variation seeks to justify that there are sufficient environmental planning grounds to vary the development standard and that strict compliance with the minimum subdivision lot size is unreasonable and unnecessary in this instance. Council disagrees with the applicant's justification to vary the development standard. While the subdivision pattern of immediate adjacent lots is highly varied in terms of size, layout and orientation, the subdivision pattern of the wider locality generally demonstrates a consistent pattern with compliant lot sizes.

While the applicant has submitted concept plans that a dwelling on each lot is capable of complying with critical built form controls, including building height, wall height, side building envelope, boundary setbacks and landscaped open space, the existing dwelling on proposed Lot 2 is to be retained. This causes conflict with the layout and positioning of the right of carriageway. Council has requested the applicant provide a landscaped area in the northeast corner of the site to help reduce the detrimental visual impact to the public domain caused by the proposed "gun barrel" driveway. As a result, a compliant passing bay is unable to be provided within the lot boundaries under the current proposal. Demolition or alteration of the existing dwelling is likely to be required to facilitate a compliant passing bay onsite.

In summary, Council is not satisfied that the proposal meets the aims and objectives and outcomes of the relevant policies and controls as detailed in the body of this report. On balance, the proposal is recommended for **refusal** having considered the relevant issues as part of the assessment of the plans submitted.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the Torrens title subdivision of one lot into two lots and construction of a new driveway and crossing, with drainage infrastructure to support the proposed development.

AMENDED PLANS

The applicant submitted amended plans during the application assessment due to visual impact concerns raised by Council regarding the proposed "gun barrel" design of the driveway. The siting of the driveway was amended to facilitate a 2m x 2m landscaped area in the northeast corner of proposed Lot 2 to help reduce the visual impact of the proposed driveway when viewed from the public domain.

The proposed drainage and service easement location was also relocated from within the right of carriageway easement to a separate easement along the western side boundary. This was due to the proposal to retain the existing dwelling on proposed Lot 2, in which its siting inhibited the ability to provide a 4.0m wide right of carriageway easement.

In accordance with the provisions of the Northern Beaches Community Participation Plan, as the amendments are considered to be minor and will not cause any change to the environmental impact of the development on nearby properties or the public domain, re-notification of the application was not required.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.1 Minimum subdivision lot size
Warringah Development Control Plan - C1 Subdivision

SITE DESCRIPTION

Property Description:	Lot 1 DP 661034 , 31 Oxford Falls Road BEACON HILL NSW 2100
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Oxford Falls Road.</p> <p>The site is regular in shape with a frontage of 17.35m along Oxford Falls Road and a depth of 65.8m. The site has a surveyed area of 1,141m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates single storey residential dwelling.</p> <p>The site falls approx. 4.4m from the southwest towards the northeast.</p> <p>The site contains large grassed areas at the front and rear of the dwelling. Several large and canopy trees are located on and adjacent to the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Pre-lodgement meeting **PLM2020/0174** was held on 18/08/2020 for Subdivision of Land (1 into 2 lots).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) –	Division 8A of the EP&A Regulation 2000 requires the consent

Section 4.15 Matters for Consideration'	Comments
Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amendments to the design and layout of the proposed driveway.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of WLEP 2011 and WDCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 11/11/2020 to 25/11/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Antony Robert Tyler	2 Dareen Street BEACON HILL NSW 2100
Mr Russell Matheson Cragg	33 A Oxford Falls Road BEACON HILL NSW 2100

The following issues were raised in the submissions and each have been addressed below:

- Non-compliance with minimum subdivision lot size
- Vegetation impacts
- Privacy/amenity impacts

The matters raised within the submissions are addressed as follows:

- *Concern is raised that the proposed subdivision does not comply with the minimum lot size requirement of the site and is inconsistent with the prevailing subdivision pattern.*

Comment:

Council raises concern that the proposed subdivision and non-compliant lot sizes are inconsistent with the prevalent subdivision pattern of the locality.

A detailed assessment is provided in this report under Clause 4.6 of WLEP 2011 and Part C1 of WDCP.

- *Concern is raised that development will require the removal of existing significant vegetation.*

Comment:

Council's Landscape Officer has reviewed the submitted documentation and raise no objection to the proposal, subject to conditions if approved.

Any future development application for a new dwelling will be independently assessed against the relevant development controls and policies relating to the preservation of trees and bushland vegetation.

- *Concern is raised that the proposed subdivision will lead to unreasonable privacy and amenity impacts of future development on adjacent properties.*

Comment:

The applicant has submitted concept plans for future dwelling development on the subdivided lots. The plans indicate that it may be possible for a dwelling to be constructed that achieves appropriate levels of privacy and amenity between dwellings.

Any future development application for a new dwelling will be independently assessed against the relevant development controls and policies relating to amenity, privacy and solar access.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>This application is for the subdivision on one lot into two lots, comprising of the construction of a new driveway and crossing, with drainage infrastructure to support the proposed development. The existing dwelling on Lot 2 has been noted for retention.</p> <p>Council's Landscape Referral section has considered the application against the Warringah Local Environment Plan, and the following Warringah DCP 2011 controls:</p> <ul style="list-style-type: none"> • C1 Subdivision <p>An indicative building layout and proposed walling is shown for Lot 1. This assessment applies only to the subdivision works, as development works upon Lot 1 is subject to a separate application, including assessment of impacts to existing vegetation.</p> <p>No existing trees protected by Council's DCP are proposed for</p>

Internal Referral Body	Comments
	<p>removal under the subdivision works, and all such trees shall be retained and protected.</p> <p>The landscape component of this application is therefore acceptable subject to the protection of existing vegetation.</p>
NECC (Development Engineering)	<p><u>Stormwater Disposal</u></p> <p>The proposal is for a 2 Lot subdivision with the addition of a driveway and car stand area. Although concept plans are provided for new dwellings on both lots for future development it is indicated that the existing dwelling on proposed Lot 2 is to be retained at the present time.</p> <p>The engineering plans indicate that the stormwater from the site is to be disposed of to the kerb in Oxford Falls Road. It is unclear if a single outlet is proposed for both lots but in accordance with Council's Water Management for Development Policy concentrated discharge to the kerb for the whole site is to be restricted to a maximum of 30l/s for 1% AEP storm event at 15m apart.</p> <p>As such on site detention shall be provided in accordance with Council's Water Management for Development Policy Clause 9.0. to restrict stormwater discharge from both proposed lots to the kerb.</p> <p><u>Driveway</u></p> <p>The minimum constructed width of the access driveway within the proposed right of way is to be 3.5m wide with passing bays every 30m. The passing bays are to be a minimum of 5m wide by 10m with the first one provided at the front boundary in accordance with C1 Subdivision of Council's DCP.</p> <p>Additional Information Received on 29/12/2020</p> <p>Amended plans with the provision of OSD for proposed Lot 2 discharging via a separate outlet to Oxford Falls Road is satisfactory. No objections to approval subject to conditions as recommended.</p> <p>Additional Information Received on 19/02/2021</p> <p>The plans for the driveway proposes a landscaped zone in the at the front boundary which introduces a skew in the driveway where the passing bay is proposed. With the current design the vehicles will only be able to pass each other in the road reserves and not within the site. The proposed layout for the access driveway is not supported.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
---------------------------------	-----

After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	600m ²	Lot 1: 520.7m ²	13.2%	No
		Lot 2: 479.7m ² (excluding right of carriageway)	20%	No

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Minimum Subdivision Lot Size
Requirement:	600m ²
Proposed:	Proposed Lot 1: 520.7m ² Proposed Lot 2: 479.7m ² , excluding right of carriageway
Percentage variation to requirement:	Proposed Lot 1: 13.2% Proposed Lot 2: 20%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

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

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 4.1 - Minimum subdivision lot size development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

Comment:

The Applicant's written request (attached to this report as an Appendix) has not demonstrated that the objectives of the development standard are achieved.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- *The proposed subdivision results in allotments which are in keeping with the size of existing lots in the locality. The proposed lots are consistent with the existing pattern of subdivision to the east and west along Oxford Falls Road and the immediate area surrounding the site.*
- *As detailed in the concept dwelling design is provided to support the submission, Proposed Lot 1 can readily accommodate a future dwelling that provides for a footprint that will maintain Council's required side and rear setbacks together with a landscaped area that exceeds 40%.*
- *The existing dwelling will be retained within Proposed Lot 2, with an indicative dwelling design provided to confirm that were the lot to be redeveloped in the future, the lot can accommodate a modern two story dwelling with car parking and which complies with Council's setback and landscaped area controls.*
- *The location of the future building platform will allow for the retention of views over and past the building from the public and private domain.*

- *The development will present a variation to the minimum lot size control, however is in keeping with the size and configuration of lots in the locality. Notwithstanding the minor variation to the lot size control, the proposal is considered to have a negligible impact on the locality and is therefore considered worthy of support.*

While it is acknowledged there are some lots in the vicinity of the site that are undersized and have an irregular pattern, many of these lots were created under planning instruments that are no longer in force. When taking into account the wider locality along Iris Street and Dareen Street, almost all lots exceed the minimum subdivision lot size and have a consistent subdivision pattern. Council does not accept the justification that the proposed subdivision is consistent with the prevalent subdivision pattern of the locality.

The concept dwelling plans indicate that it is possible to construct a new dwelling on each lot that comply with all relevant built form controls. However, the applicant proposes that the existing dwelling on proposed Lot 2 is to be retained. This causes conflict and visual amenity impacts with the proposed right of carriageway for vehicle access to proposed Lot 1 along the eastern boundary.

A small portion of the eave on the eastern side of the existing dwelling overhangs the right of carriageway, which is a hazard for vehicles utilising the easement. The applicant proposes to cut back the eave to remove this encroachment. However, this does treatment does not lessen the unacceptable visual amenity impact caused by the "gun barrel" effect of the proposed driveway when viewed from the public domain.

During assessment Council recommended to incorporate a minimum 2m x 2m landscaped area at the northeast corner of the site to help mitigate the visual impact of the proposed driveway. While the applicant's solution in the amended plans is acceptable, this causes problems with the provision of a compliant passing bay within the lot boundaries.

In summary, due to the proposed undersized lots and retention of the existing dwelling, the development as proposed and request to vary the Minimum subdivision lot size development standard cannot be supported.

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment. The request does not satisfy cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Minimum subdivision lot size development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the WLEP 2011 are:

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

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality.

Comment:

While the immediate vicinity of the site demonstrates lot sizes and patterns that are highly variable, the overall prevalent subdivision pattern of properties in the wider locality is mostly consistent with compliant lot sizes. It is noted that most subdivisions resulting in undersized lots in the locality occurred under planning instruments that are no longer in force.

The layout of the proposed lots and right of carriageway, while retaining the existing dwelling does not offer the most appropriate planning outcome for the site by way of amenity and visual impact.

It is considered that the development does not satisfy this objective.

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development.

Comment:

The subject site is zoned R2 Low Density Residential. Commercial and industrial development is prohibited on this site and surrounding sites and therefore this objective does not apply.

(c) to protect the integrity of land holding patterns in rural localities against fragmentation.

Comment:

The subject site is not zoned for rural purposes and therefore this objective does not apply

(d) to achieve low intensity of land use in localities of environmental significance.

Comment:

The site is not in a locality of environmental significance and will not impact on any localities that are.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland.

Comment:

The site is not bushfire prone land.

(f) to protect and enhance existing remnant bushland.

Comment:

The site does not contain any existing remnant bushland.

It is considered that the development satisfies this objective.

(g) to retain and protect existing significant natural landscape features.

Comment:

There are no significant natural landscape features on the site. Any new dwellings will have to comply with Part E6 'Retaining unique environmental features' in the Warringah DCP. The development satisfies this objective.

It is considered that the development satisfies this objective.

(h) to manage biodiversity.

Comment:

The subject site is zoned R2 Low Density Residential and does not have significant value in terms of biodiversity.

It is considered that the development satisfies this objective.

(i) to provide for appropriate stormwater management and sewer infrastructure.

Comment:

Stormwater infrastructure will be contained within the easement on the southern side of the lots. Council's Development Engineers have reviewed this design and raised no objections.

It is considered that the development satisfies this objective.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

While the proposal will provide an additional residential lot, the subdivision, as proposed, is not considered to provide the most appropriate outcome for future development in the locality. It is considered the development will cause unreasonable amenity and visual impact to nearby dwelling and the public domain.

It is considered that the development does not this objective.

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

Comment:

The proposal will not prevent other sites from providing facilities or services to meet the day to day needs of residents.

It is considered that the development satisfies this objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The plans show that proposed Lot 2 will remain fully compliant with the landscaped open space control and that an appropriate building envelope for proposed Lot 1 is easily achieved. As such, both new lots will be suitably characterised by landscaped settings.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Minimum Subdivision Lot Size Development Standard can not be assumed.

Warringah Development Control Plan

Built Form Controls

The proposed development is for the subdivision of land and the provision of relevant utility services to the proposed lots. The application does not seek consent for the demolition of the existing dwelling or the construction of any new dwellings on the subdivided lots.

The assessment below relies on the submitted concept dwelling plans for proposed Lot 1.

Built Form Control	Requirement	Proposed	% Variation*	Complies

B1 Wall height	7.2m	6.5m	N/A	Yes
B3 Side Boundary Envelope	E - 4m	Within envelope	N/A	Yes
	W - 4m	Within envelope	N/A	Yes
B5 Side Boundary Setbacks	E - 0.9m	3.0m	N/A	Yes
	W - 0.9m	2.0m	N/A	Yes
	N - Merit	6.0m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	No front boundary	N/A	N/A
B9 Rear Boundary Setbacks	6m	6.26m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (208.3m ²)	48.1% (250.4m ²)	N/A	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

Based on the size of proposed Lot 2, it can be reasonably assumed that a similarly sized and sited dwelling can also demonstrate compliance with the built form controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C1 Subdivision	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	<p>R2 Low Density Residential zone requirements:</p> <p>Proposed new allotments:</p> <p>a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m²</p>	<p><u>Proposed Lot 1</u></p> <p>Width: 17.35m</p> <p>Depth: 30.03m</p> <p>Building area: >150m² building area able to be achieved</p>	Yes
		<p><u>Proposed Lot 2</u></p> <p>Width: 17.35m (12.35m excluding right of carriageway)</p> <p>Depth: 35.77m</p> <p>Building area: >150m² building area able to be achieved</p>	<p>Yes</p> <p>(No when excluding right of carriageway)</p>
Access	<p>Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.</p> <p>Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.</p> <p>Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.</p> <p>Driveways in excess of 200 metres will not be allowed for residential development.</p> <p>Driveways that are 30m or more in length require a passing bay to be provided every 30m. To</p>	<p>Motor vehicle access to each residential allotment is provided.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles is not inhibited.</p> <p>The driveway gradients has been reviewed by Council's Development Engineers as acceptable.</p> <p>Driveway less than 200m.</p> <p>Council's Development Engineer advises the proposed passing bay does not comply with the minimum width and distance requirements and may cause conflict between vehicles.</p> <p>Right of carriageway width is proposed to be 3.5m. The proposed service and drainage easement separate from right of carriageway easement, meaning addition width of the right of carriageway is not required.</p>	No

provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.

Passing bays should have regard to sight conditions and minimise vehicular conflict.

Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay.

Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.

Width of accessways are to be as follows:

Number of lots to be serviced	Width of clear constructed accessway (m)
1 - 5	3.5
6 - 10	5.0
in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)

Provision of services in rights of carriageway are as follows:

Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)

	<table><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>	Up to 3 lots	0.5	4 or more lots	1.0		
Up to 3 lots	0.5						
4 or more lots	1.0						
Design and construction	<p>All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards.</p> <p>Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.</p>	<p>The plans have been reviewed by Council's Development Engineers who have raised concern that the proposed passing bay is not compliant with the relevant width and length requirements.</p> <p>Other aspects of the proposal, including stormwater and OSD have been reviewed as acceptable, subject to condition if approved.</p>	No				
Drainage	<p>Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.</p>	<p>Each allotment will have the ability to drain to Oxford Falls Road. Proposed Lot 1 will do so through an easement over proposed Lot 2.</p>	Yes				
Restrictions	<p>Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive</p>	<p>Appropriate conditions can be included in the consent if approved.</p>	Yes				

	covenant or like instrument with the Council nominated as a party.		
Environmentally constrained land	In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment. Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	The land is not environmentally constrained.	Yes
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	The site is not bushfire prone.	Yes

Description of non-compliance

The width of proposed Lot 2, excluding the right of carriageway is 12.35m (17.35m including the right of carriageway).

The control requires a minimum of 13m.

The proposed passing bay does not comply with the control requirements of 5m wide for a length of 10m.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To regulate the density of development.*

Comment:

Proposed Lot 2 will contain the existing dwelling, while a new dwelling will be built on proposed Lot 1 (subject to a separate development application). The applicant has submitted concept dwelling plans that indicate that a new dwelling is able to comply with all relevant built form controls.

- *To limit the impact of new development and to protect the natural landscape and topography.*

Comment:

Proposed Lot 2 will contain the existing dwelling and will preserve the natural landscape and topography that is currently in place on that part of the site.

The lot width non-compliance will have a minimal impact on any future development that will occur over the already disturbed area of the site.

- *To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.*

Comment:

The concept dwelling plans indicate that, if the lots are subdivided, the dwelling on proposed Lot 1 (i.e. the existing dwelling) will fully comply with all relevant controls. The plans also show that proposed Lot 2 (which does comply with the minimum width control) will contain a minimum 150m² building envelope. However, the retention of this dwelling causes conflict with the positioning of the right of carriageway to cater for a compliant passing bay, while also provided a landscaped area along the front boundary to limit the visual impact of the driveway when viewed from the public domain.

- *To maximise and protect solar access for each dwelling.*

Comment:

Both lots will receive access to adequate solar access. The neighbouring properties to the east, west and south will continue to receive adequate sunlight as a result of the retention of the existing dwelling.

Any new development on either proposed lot will need to comply with the solar access provisions of the DCP.

- *To maximise the use of existing infrastructure.*

Comment:

No additional major infrastructure is required for this development, apart from the construction of a new driveway. The two lots will utilise existing infrastructure.

- *To protect the amenity of adjoining properties.*

Comment:

The retention of the existing dwelling on proposed Lot 2 will maintain and protect the existing amenity of surrounding properties. It is considered that a well designed, fully compliant dwelling on proposed Lot 1 will be able to protect the amenity of adjoining properties, particularly the property to the south. If the application were approved, conditions to include a building footprint envelope to the subdivision plan outlining appropriate building setbacks would be imposed to guide future development to limit amenity impact on adjacent dwellings.

- *To minimise the risk from potential hazards including bushfires, land slip and flooding.*

Comment:

The site is not bushfire or flood prone. It is located partly in landslip area B, meaning that it is one of the lower risk categories.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent

with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environment Plan 2011 seeking to justify a contravention of Clause 4.1 Minimum Subdivision Lot Size has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case;

and

b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

This proposal is for the subdivision of one lot into two. The two proposed lots do not comply with the minimum lot size development standard, with significant variations of 13.2% and 20% (for Lots 1 and 2 respectively) below the minimum standard of 600m². Proposed Lot 2 also has a non-compliance with the minimum width, however, it will contain the existing dwelling which will continue to fully comply with all built form controls.

The subject site sits on the southern side of Oxford Falls Road and the immediate subdivision pattern demonstrates variation. However, lots in the wider vicinity along Iris Street and Dareen Street generally demonstrate a consistent pattern with compliant lot sizes.

The applicant submitted a clause 4.6 request to vary the development standard. It is considered this request has not provided adequate environmental planning reasons to show that strict compliance with the standard was unnecessary. While the concept dwelling plans demonstrate that each new lot can accommodate a dwelling house and a suitable landscaped setting, the applicant proposes to retain the existing dwelling on proposed Lot 2. This causes conflict with the positioning of the proposed right of carriageway to ensure a compliant passing bay is provided and the provision of a landscaped area at the northeast corner of the site to reduce the visual impact of the "gun barrel" driveway.

As the above issues are generally caused by the siting of the existing dwelling and non-compliant lot sizes, the development is recommended for refusal.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2020/1386 for the Subdivision of one lot into two, alteration to the existing dwelling, new driveway and parking on land at Lot 1 DP 661034,31 Oxford Falls Road, BEACON HILL, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1 Minimum Subdivision Lot Size of the Warringah Local Environmental Plan 2011.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1 Subdivision of the Warringah Development Control Plan.







Vaughan Milligan Development Consulting Pty Ltd

APPENDIX:
CLAUSE 4.6 SUBMISSION – MINIMUM LOT SIZE

Vaughan Milligan Development Consulting Pty Ltd

**WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF
WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

31 OXFORD FALLS ROAD, BEACON HILL

**FOR THE PROPOSED TORRENS TITLE SUBDIVISION OF ONE LOT INTO TWO LOTS AND
CONSTRUCTION OF A NEW CAR STAND AREA, DRIVEWAY AND CROSSING**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MINIMUM SUBDIVISION LOT SIZE AS
DETAILED IN CLAUSE 4.1 OF THE WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

For: Proposed Torrens Title subdivision of one lot into two lots, and construction of a new car stand area, driveway and crossing
At: 31 Oxford Falls Road, Beacon Hill
Owner: Henrik & Tommasina Valentin
Applicant: Henrik & Tommasina Valentin c/- Vaughan Milligan Development Consulting

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011. In this regard it is requested Council support a variation with respect to compliance with the minimum subdivision lot size as described in Clause 4.1 of the Warringah Local Environmental Plan 2011 (WLEP 2011).

2.0 Background

Clause 4.1 restricts the minimum subdivision lot size in this locality to 600m² and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The resultant allotments which have been defined as Proposed Lots 1 and 2, will have the following indices:

Site Area (Lot 1):	520.7m ²
Site Area (Lot 2):	484.1m ² (620.5m ² incl. access corridor)

Lot 1 will present a variation of 79.3m² or 13.2% from the standard.

Lot 2 will present a variation of 115.9m² or 19.3% from the standard.

Vaughan Milligan Development Consulting Pty Ltd

2.1 Is Clause 4.1 of the LEP a development standard?

(The definition of “development standard” in clause 1.4 of the Environmental Planning and Assessment Act 1979 (“EP&A Act”) includes:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*

It follows that clause 4.1 of WLEP 2011 is a development standard.

3.0 Purpose of Clause 4.6

The Warringah Local Environmental Plan 2011 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should

Vaughan Milligan Development Consulting Pty Ltd

achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of the LEP provides:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Clause 4.1 (the Minimum subdivision lot size) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development does not comply with the minimum subdivision lot size development standard pursuant to Clause 4.1 of WLEP which specifies a minimum lot size of 600m² in this area of Beacon Hill.

Proposed Lot 1 will present a lot size of 520.7m², which is a variation to the standard of 79.3m² or 13.2%.

Proposed Lot 2 will present a lot size of 620.5m² or 484.1m² excluding the access corridor, which is a variation to the standard of 115.9m² or 19.3%.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of WLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*

Vaughan Milligan Development Consulting Pty Ltd

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Planning Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of the LEP provides:

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

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Vaughan Milligan Development Consulting Pty Ltd

The proposed subdivision is not subject to Clause 4.6(6) which restricts the size of allotments to be subdivided in certain zones. The site is zoned R2 Low Density Residential and is not subject to the provisions of Clause 4.6(6).

Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude Clause 4.1 of the LEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the retention of the existing dwelling and create the opportunity to construct a new dwelling within the proposed new lot to the rear. A new car stand area will be provided for the existing dwelling, with each lot having driveway access from Oxford Falls Road.

The subdivision of one lot into two lots, it is considered to be consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

- 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 ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

As sought by the zone objectives, the proposal will provide for proposed Torrens Title subdivision of one lot into two lots, and construction of a new car stand area, driveway and crossing with associated services, with the proposal being sensitive to the location and the topography of the locality.

As indicated in the concept dwelling design information provided with the application, together with the engineering design for the proposed driveway and services, the proposed subdivision will provide lots that are capable of accommodating dwellings that will provide suitable amenity for occupants and neighbours, and therefore compliance with the minimum allotment size standard is unnecessary and unreasonable in the circumstances of the case.

Vaughan Milligan Development Consulting Pty Ltd

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the minimum subdivision lot size standard contained in Clause 4.1 of WLEP.
- 5.2 Clause 4.1 of WLEP specifies a minimum subdivision lot size of 600m² in this area of Beacon Hill.
- 5.3 Proposed Lot 1 will present a lot size of 520.7m², which is a variation to the standard of 79.3m² or 13.2%.
- 5.4 Proposed Lot 2 will present a lot size of 620.5m² or 484.1m² excluding the access corridor, which is a variation to the standard of 115.9m² or 19.3%.

6.0 Relevant Caselaw

- 6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:
 - 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
 - 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
 - 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
 - 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
 - 21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to*

Vaughan Milligan Development Consulting Pty Ltd

that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

- 6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is Clause 4.1 of WLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.1 and the objectives for development for in the R2 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes Clause 4.1 of WLEP?

Vaughan Milligan Development Consulting Pty Ltd

7.0. Request for Variation

7.1 Is compliance with Clause 4.1 unreasonable or unnecessary?

- (a) This request relies upon the 1st & 2nd ways identified by Preston CJ in Wehbe.
- (b) The first way in Wehbe is to establish that the objectives of the standard are achieved.
- (c) Each objective of the minimum subdivision lot size standard, as outlined under Clause 4.1, and reasoning why compliance is unreasonable or unnecessary, is set out below:

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,

The R2 Low Density Residential Zone contemplates low density residential uses on the land. The proposed subdivision is consistent with the existing subdivision pattern in the locality as noted in Table 1 below. The proposal is therefore considered to be in keeping with the residential character of the locality.

Table 1: Size of existing lots in the immediate locality

Address	Lot	DP	Land Area (m ²)
301/0 Brooker Avenue BEACON HILL NSW 2100	301	599065	49.00
44A Oxford Falls Road BEACON HILL NSW 2100	3	862488	317.20
44B Oxford Falls Road BEACON HILL NSW 2100	2	862488	298.20
44C Oxford Falls Road BEACON HILL NSW 2100	1	862488	339.80
44D Oxford Falls Road BEACON HILL NSW 2100	4	862488	262.50
35 Oxford Falls Road BEACON HILL NSW 2100	1	850352	251.90
35 A Oxford Falls Road BEACON HILL NSW 2100	2	850352	382.60
8A Oxford Falls Road BEACON HILL NSW 2100	150	873000	393.40
210A Warringah Road BEACON HILL NSW 2100	202	871952	420.10
39 Tristram Road BEACON HILL NSW 2100	1	859147	444.40
39A Tristram Road BEACON HILL NSW 2100	2	859147	408.00
13 Tristram Road BEACON HILL NSW 2100	1	840371	830.90
13A Tristram Road BEACON HILL NSW 2100	2	840371	416.90
1B Tristram Road BEACON HILL NSW 2100	51	846606	323.70
1A Daines Parade BEACON HILL NSW 2100	2	871808	400.20
80A Iris Street BEACON HILL NSW 2100	31	1067494	279.20
80B Iris Street BEACON HILL NSW 2100	32	1067494	279.30
51A Iris Street FRENCHS FOREST NSW 2086	2	1018589	422.50
51 Iris Street FRENCHS FOREST NSW 2086	1	1018589	670.90
49 Iris Street FRENCHS FOREST NSW 2086	1	862415	380.60
49 A Iris Street FRENCHS FOREST NSW 2086	2	862415	709.50

31 Oxford Falls Rd, Beacon Hill

32

Vaughan Milligan Development Consulting Pty Ltd

11 Patanga Road FRENCHS FOREST NSW 2086	1	853565	327.90
92 Dareen Street FRENCHS FOREST NSW 2086	2	853565	271.50
90A Dareen Street FRENCHS FOREST NSW 2086	1	855917	380.10
90B Dareen Street FRENCHS FOREST NSW 2086	2	855917	380.80
89 Dareen Street FRENCHS FOREST NSW 2086	1	1070945	290.90
91 Dareen Street FRENCHS FOREST NSW 2086	2	1070945	291.10
14A Patanga Road FRENCHS FOREST NSW 2086	2	865016	256.20
14 Patanga Road FRENCHS FOREST NSW 2086	1	865016	380.60
16 Patanga Road FRENCHS FOREST NSW 2086	1	1206353	318.70
16A Patanga Road FRENCHS FOREST NSW 2086	2	1206353	319.20
20 Patanga Road FRENCHS FOREST NSW 2086	101	857954	337.70
31 Iris Street FRENCHS FOREST NSW 2086	100	857954	488.40
27 Iris Street FRENCHS FOREST NSW 2086	1	848217	383.00
27A Iris Street FRENCHS FOREST NSW 2086	2	848217	434.00
25 Iris Street FRENCHS FOREST NSW 2086	1	836660	433.00
19 Inverness Avenue FRENCHS FOREST NSW 2086	2	836660	475.10
1A Harmston Avenue FRENCHS FOREST NSW 2086	592	843492	349.70
36 Frenchs Forest Road East FRENCHS FOREST NSW 2086	591	843492	495.00
32A Frenchs Forest Road East FRENCHS FOREST NSW 2086	1	1065395	377.40
32 Frenchs Forest Road East FRENCHS FOREST NSW 2086	2	1065395	377.40
305A Warringah Road BEACON HILL NSW 2100	61	1031836	276.70
305B Warringah Road BEACON HILL NSW 2100	62	1031836	278.70
303A Warringah Road BEACON HILL NSW 2100	51	1031837	276.70
303B Warringah Road BEACON HILL NSW 2100	52	1031837	278.70

As discussed above, the proposed subdivision results in allotments which are in keeping with the size of existing lots in the locality. The proposed lots are consistent with the existing pattern of subdivision to the east and west along Oxford Falls Road and the immediate area surrounding the site.

As detailed in the concept dwelling design is provided to support the submission, Proposed Lot 1 can readily accommodate a future dwelling that provides for a footprint that will maintain Council's required side and rear setbacks together with a landscaped area that exceeds 40% (measured with a minimum width of 2m).

The existing dwelling will be retained within Proposed Lot 2, with an indicative dwelling design provided to confirm that were the lot to be redeveloped in the future, the lot can accommodate a modern two story dwelling with car parking and which complies with Council's setback and landscaped area controls.

Vaughan Milligan Development Consulting Pty Ltd

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,

This control is not relevant in this instance as the land is zoned for residential development and is not suitable for commercial or industrial development.

(c) to protect the integrity of land holding patterns in rural localities against fragmentation,

This control is not relevant in this instance as the land is not within a rural locality and is not sensitive to fragmentation.

(d) to achieve low intensity of land use in localities of environmental significance,

The subject site has not been noted as being of environmental significance.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,

The land has not been classified as being bushfire prone land.

(f) to protect and enhance existing remnant bushland,

The subject site does not contain remnant bushland and therefore this control is not relevant in this instance

(g) to retain and protect existing significant natural landscape features,

The site is not noted as containing existing significant natural landscape features. The proposed works do not require any significant land disturbance and other than for some potential minor benching of the rear site to provide for a level building platform with a future Development Application, the general topography of the site will be maintained.

(h) to manage biodiversity,

The development will not require the removal of any significant protected vegetation. Some trees will be removed within the building platform however these works would be carried out at the time of the construction of a future dwelling.

An Arboricultural Impact Assessment has been provided which notes that the majority of the trees on the site and in the neighbouring properties will be maintained..

(i) to provide for appropriate stormwater management and sewer infrastructure.

Each lot will have access to a stormwater disposal system in accordance with Council's controls. Stormwater from each lot will be directed by a gravity to the street gutter in Oxford Falls Road.

Both lots will have access to Water Board sewer infrastructure.

Vaughan Milligan Development Consulting Pty Ltd

7.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the*

Vaughan Milligan Development Consulting Pty Ltd

development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

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

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed lot configuration will allow for the retention of the existing dwelling, which is in good order and to require its demolition and replacement with a new structure would not constitute good ecologically sustainable development (cl 1.3(b)).
- The proposed subdivision, which as discussed introduces an appropriate and compatible lot size within the locality, which promotes the orderly & economic use of the land (cl 1.3(c)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a new allotment that provides sufficient building area to accommodate a new dwelling of a size and potential floor area for future occupants, with appropriate residential amenity.

The location of the future building platform will allow for the retention of views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the minimum subdivision lot size.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there

Vaughan Milligan Development Consulting Pty Ltd

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

7.4 Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.3A and the objectives of the R2 Low Density Residential Zone?

- (a) Section 4.2 of this written request suggests the 1st & 2nd tests in Wehbe is made good by the development.
- (b) Each of the objectives of the R2 Low Density Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ also found that “*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone*”.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the variation to the minimum subdivision lot size, the proposed subdivision will be consistent with the individual Objectives of the R2 Low Density Residential Zone for the following reasons:

The site is located in the R2 Low Density Residential Zone. The objectives of the R2 zone are noted as:

- *To provide for the housing needs of the community within a R2 Low Density Residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

It is considered that notwithstanding the noncompliance of each lot with the minimum subdivision lot size, the proposed subdivision of one lot into two will be consistent with the individual Objectives of the R2 Low Density zone for the following reasons (over):

Vaughan Milligan Development Consulting Pty Ltd

- ***To provide for the housing needs of the community within a R2 Low Density Residential environment.***

As found in Nessdee, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form of development within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

As previously noted in Table 1 which outlined the variety lot sizes in the area, the proposed resulting lot sizes will allow for residential development in accordance with the expectations of the community for a dwelling size with appropriate amenity that is compatible with the R2 Low Density Residential zone.

As discussed above, the proposed subdivision results in allotments which are in keeping with the size of existing lots in the locality. The proposed lots are consistent with the existing pattern of subdivision to the east along Oxford Falls Road.

Proposed Lot 2 can readily accommodate the retention of the existing dwelling, and Proposed Lot 1 can accommodate a future dwelling which complies with Council's controls, as noted by the indicative building envelope in the submitted Subdivision Plan (Sheet No. 1) in the concept dwelling designs provided with the application..

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

The development does not suggest any alternate land uses and this Objective is not directly relevant to the subject proposal.

- ***To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.***

The proposal provides for the Torrens Title subdivision of one lot into two lots and construction of a new car stand area, driveway and crossing, together with appropriate services for the lots, in a manner which will retain the single dwelling character of the immediate area.

This objective is achieved in that the proposal will not require any significant further site disturbance or excavation, with minimal alteration to the natural ground levels and through the retention of generous areas of soft landscaping, will maintain the balance between landscaping and built form.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed minimum subdivision lot size control, whilst maintaining consistency with the zone objectives.

Vaughan Milligan Development Consulting Pty Ltd

7.5 Has Council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.6 Has the Council considered the matters in clause 4.6(5) of MLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed subdivision of the land for the particular site and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

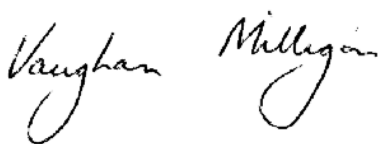
7.0 Conclusion

This written request to vary the minimum lot size specified in Clause 4.1 of the Warringah LEP 2011 adequately demonstrates that the objectives of the standard will be met.

The request demonstrates that the lots can be readily developed in a manner which is consistent with the surrounding pattern and can achieve the Objectives of the R2 Low Density Zone.

The density of the proposed subdivision is appropriate for the site and locality.

In my opinion, strict compliance with the minimum lot size control would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN
Town Planner