

## REPORT TO APPLICATION DETERMINATION PANEL

Meeting held on 25 August 2016

**44 Brighton Street Freshwater - Subdivision of one lot into two lots and demolition of a dwelling house**

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2016/0307
<b>Responsible Officer:</b>	Kevin Short
<b>Land to be developed (Address):</b>	Lot 42 DP 14450, 44 Brighton Street FRESHWATER NSW 2096
<b>Proposed Development:</b>	Subdivision of one lot into two lots and demolition of a dwelling house
<b>Zoning:</b>	LEP - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Application Determination Panel
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Jason Barry Warburton Idette Kristine Warburton
<b>Applicant:</b>	Vaughan Milligan Development Consulting Pty Ltd
<b>Application lodged:</b>	06/04/2016
<b>Application Type:</b>	Local
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	18/04/2016 to 03/05/2016
<b>Advertised:</b>	Not Advertised, in accordance with A.7 of WDCP
<b>Submissions:</b>	6
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 15,000.00

### 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:

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- 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 all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers 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

<b>Property Description:</b>	Lot 42 DP 14450 , 44 Brighton Street FRESHWATER NSW 2096
<b>Detailed Site Description:</b>	<p>The subject site is identified as Lot 42 DP 14450, is rectangular in shape and has an area of 1021m<sup>2</sup> with a street frontage of 12.185m to Brighton Street and depth of 83.775m.</p> <p>A one storey dwelling house and detached garage occupy the mid and rear southern portion of the site, respectively. Vehicular access to the site is provided by a driveway which runs adjacent to the western boundary.</p> <p>Vegetation contained within the front and rear setback areas of the site includes grass lawn areas interspersed by medium to large size canopy trees and understorey shrubs.</p> <p>Under WLEP 2011 the site is zoned R2 Low Density Residential and adjoining and surrounding development is characterised by a mixture of modern and traditional dwelling house style in landscape settings.</p>

Map:



## SITE HISTORY

### Pre-lodgement Meeting PLM2015/0149

Pre-lodgement Meeting PLM2015/0149 for the Subdivision of 1 lot into 2 lots and Construction of two dwellings was held 28 January 2016. The proposed development is consistent with the advice provided in these notes in relation to:

- The proposed pattern of subdivision and shape, size, depth and width of each lot created;
- Submission of a Clause 4.6 Variation to support the numerical variation to the Minimum Lot Size;
- Submission of indicative building footprints to demonstrate that a dwelling house can be constructed on each created lot in accordance with the built form controls of Warringah Development Control Plan; and
- Submission of a concept inter-allotment drainage system, driveway and vehicle turning paths.

## PROPOSED DEVELOPMENT IN DETAIL

Development consent is sought for the Torrens title subdivision of one (1) lots into two (2) lots and demolition of the existing dwelling house and outbuildings.

Specifically, the development proposes the following;

- Subdivision of one (1) lot into two (2) lots of 510.3m<sup>2</sup> (384.8m<sup>2</sup> excluding easement) and 510m<sup>2</sup>;
- Construction of a driveway (within proposed Lot 1) and provision of a right of carriageway (ROW) for access to proposed Lot 2;
- Concept interallotment drainage system including an on-site stormwater detention system and drainage to Brighton Street;
- Removal of eight (trees) for the subdivision works (i.e. utilities and services); and
- Demolition of the existing dwelling house, outbuildings and driveway.

The construction of two (2) future dwelling houses will form part of a separate development application (s).

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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&amp;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&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p>However, a concept inter-allotment drainage system and driveway long section plan was submitted following the referral comments provided by Council's Development Engineers.</p> <p><u>Clause 92</u> of the EP&amp;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&amp;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&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home</p>

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Section 79C 'Matters for Consideration'	Comments
	<p>Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;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&amp;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 79C (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) 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) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) 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 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development as the two (2) residential lots can each accommodate a dwelling, provide access and associated infrastructure whilst maintaining an appropriate landscape setting when developed for dwelling houses in the future.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	The six (6) submissions received in response to the notification of this application are addressed in the Public Exhibition section in this report.
Section 79C (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.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Wendy Elizabeth Bruce	46 Brighton Street FRESHWATER NSW 2096
Mrs Elizabeth Kelly	42 A Brighton Street FRESHWATER NSW 2096



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Name:	Address:
Adrian Redvers Bull	C/- Harbord Real Estate Po Box 189 FRESHWATER NSW 2096
Peta Jane Niven	48 Brighton Street FRESHWATER NSW 2096
Ms Maris Taylor	54 Brighton Street FRESHWATER NSW 2096
Ms Elizabeth Anne Dunphy	54 Brighton Street FRESHWATER NSW 2096

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

- Non-compliance with Warringah Local Environmental Plan 2011 (WLEP 2011) and Warringah Development Control Plan 2011 (WDCP 2011)
- Loss of trees
- Adverse amenity impacts
- Historical issues

The matters raised within the submissions are addressed as follows:

- **Non-compliance with WLEP 2011 and WDCP**

Comment: The residents concerns are that the proposed subdivision does not comply with the requirements of WLEP 2011 and WDCP 2011, including the proposed lot size, lot width, existing subdivision pattern and driveway design.

As detailed throughout the relevant sections of this assessment report, the subdivision application has been found to be consistent with all relevant planning legislation, instruments and policies, with the exception of the minimum lot size, lot width and width of the accessway.

Lot 1 does not comply with the Minimum subdivision lot size (i.e. 450m<sup>2</sup>) requirement of the WLEP 2011. However, the variation to the development standard is supported on merit under a Clause 4.6 Variation given the consistency of the resultant subdivision pattern with adjoining and nearby properties in terms of lot size, shape, configuration and vehicle access and that the future development of each respective site is not expected to generate unreasonable impacts on surrounding amenity, streetscape and the character of the locality.

The width of the Lot 1 and 2 is 12.19m which does not comply with the minimum 13.0m width requirement of WDCP 2011 - C1 Subdivision. However, the extent of non-compliance is minor, being 6.2% (0.81m) and the generous depth of each lot will adequately compensate for the narrow width of each lot.

Council's Development Engineer has not raised concern with the 3.0m wide driveway which will service two lots. Further, the Assessment of Proposed Vehicle Access and Carparking Arrangements report submitted with the application concludes that *"the width of the proposed accessway is compliant with the relevant requirements in 'AS/NZS 2890.1:2004' for vehicle access and are considered acceptable having regard to the residential nature of the development and the low traffic flows involved"*.

Also, consistent with recent Land and Environment Court court case decisions, including *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 9, *Moskovich v Waverley Council* [2016] NSWLEC 1015, *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 and *Wehbe v Pittwater Council* [2007] NSWLEC 827 42, it is considered that the particulars of the development satisfy the objectives of the minimum lot size development standard and that the environmental planning grounds for a departure from the development standard are sufficient.

Having regard to the above, the concerns raised do not warrant the refusal of the application.

- **Loss of trees**

Comment: The residents concerns are that the proposed subdivision will require the removal of many trees which will adversely impact on the landscape character of the immediate and surrounding area. The Arboricultural Assessment Report prepared by Tree Consulting By Jo (dated 29 February 2016), submitted with the application, details that eight (8) trees are required to be removed as part of the proposed subdivision and future development of the site. The report concludes that the trees to be removed are either exempt species under WDCP 2011, of low retention value or poor structural condition or not considered significant or worthy of being retained and restricting the future development on the site. Three (3) small to medium size canopy trees located within the rear portion of the site are to be retained.

Subject to conditions of consent, Council's Landscape Officer does not raise concern with the removal of trees. Further, it is expected that the future development of each allotment will include adequate spatial separation within all setback areas to provide a satisfactory landscape setting and compensate for any "environmental harm" caused by the loss of trees.

Having regard to the above, the concerns raised do not warrant the refusal of the application.

- **Adverse amenity impacts**

Comment: Resident raised concerns with respect to adverse amenity impacts, including privacy, overshadowing and noise, which primarily relate to the future development of the site for dwelling houses.

The creation of one new allotment is a low scale of intensification and the additional traffic generated by the development is not expected to cause adverse amenity impacts on adjoining and surrounding neighbours such as excessive noise or pollution. Whilst no dwelling houses are proposed by this application, it is expected that the future development of the site is capable of maintaining a satisfactory level of privacy, overshadowing and built form character. However, these matters will be the subject of a detailed assessment at the development application stage for a dwelling.

The concept building footprints provided with the application show that the future development of the site will enable vehicles to enter and leave the site in a forward direction thus maintaining traffic safety.

Based on the above, the concerns raised in relation to amenity impacts do not warrant the redesign or refusal of the application.

- **Other matters**

Comment: Other resident concerns are that developers have historically been granted development approvals by Council within the immediate and surrounding locality despite non-compliances with relevant planning controls and that the "*current owner has a connection with the council*" and therefore the application should not proceed under a "*cloud of corruption*".

It is assumed that previous development consents referred to have been granted by Council on the basis of the relevant development assessment process being carried out. Each application lodged with Council is assessed on its individual merits against applicable planning controls.

The connection referred to in the submission relates to the fact that the owner of the subject site is related to a senior staff member of Council. In this regard, provisions have been put in place to ensure

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the staff member has had no involvement in the assessment and determination of the application. Therefore, the public interest is protected.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

Internal Referral Body	Comments
Development Engineers	<p><u>Revised Development Engineering Comments: 16 August 2016</u></p> <p>The concept house plans for the front lot have been reviewed in regard to the need for a passing bay and a passing bay is still required given the length of the right of way exceeding the maximum length of 30m. (DCP -Subdivision minimum standard). Vehicles are not to wait for oncoming vehicles from the ROW on the driveway crossing as sight distance and pedestrian safety will be compromised.</p> <p><u>Comments provided: 20 June 2016</u></p> <p>The applicant has now supplied a concept stormwater drainage and driveway plan. However, on the driveway plan no passing bay has been shown, as required by Councils Subdivision DCP. This requirement will be conditioned. No objections to the subdivision proposal subject to conditions.</p> <p><u>Original Comments provided: 29 April 2016</u></p> <p>The application for a two lot subdivision is not supported because of the following reasons:</p> <ol style="list-style-type: none"> <li>1) The minimum size of Lot 1 - 364m<sup>2</sup> does not comply with Councils minimum standard of 450m<sup>2</sup>.</li> <li>2) As required by Councils Subdivision DCP a passing bay is required and has not be shown on the Subdivision Plan.</li> <li>3) A stormwater drainage is to be provided detailed how the Lots will be drained in accordance with Councils policies and specifications.</li> <li>4) Submission of a proposed driveway plan showing the longitudinal and appropriate cross sections , proposed cut or fill and any retaining wall where required.</li> </ol>
Landscape Officer	No objections subject to conditions as recommended.
Traffic Engineer	No objection is raised on the proposed subdivision on traffic grounds subject to the development engineers approval.

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 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. 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.

### **Warringah Local Environment 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	%	Complies
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			Variation	
Minimum subdivision lot size:	450m <sup>2</sup>	Lot 1: 510.3m <sup>2</sup> (384.8m <sup>2</sup> exclusive of access handle) Lot 2: 510.3m <sup>2</sup>	14.5% (65.2m <sup>2</sup> ) N/A	<b>No</b> Yes
Height of Buildings:	8.5m	No dwelling construction works proposed	N/A	N/A To be determined at the Development Application stage for individual allotments

## Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
4.1 Minimum subdivision lot size	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.9 Preservation of trees or vegetation	Yes
6.4 Development on sloping land	Yes

## Detailed Assessment

### 4.6 Exceptions to development standards

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	450m <sup>2</sup> per lot
Proposed:	Lot 1: 384.8m <sup>2</sup>
Is the planning control in question a development standard?	YES
Is the non-compliance with the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	14.5% (65.2m <sup>2</sup> )

The proposal must satisfy the objectives of Clause 4.1 - Minimum Subdivision Lot Size, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

#### Is the planning control in question a development standard?

The prescribed Minimum subdivision lot size pursuant to Clause 4.1 of the WLEP 2011 is a development standard.

#### What are the underlying objectives of the 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:

A review of the surrounding subdivision pattern, size and configuration reveals that the proposed lots are consistent with the surrounding area.

The proposal utilises the existing long and rectangular shape of the allotment to create two allotments that are consistent with regular (rectangular) shaped allotments.

Therefore, the proposed subdivision pattern, size and configuration is considered to be consistent with that of surrounding and existing allotments in the locality.

An analysis of adjoining and surrounding lot size and configuration are provided in the table below;

Address	Lot Size	Width	Depth	Configuration
44 Brighton Street	Lot 1: 384.8m <sup>2</sup>	12.19m	41.835m	rectangular
42 Brighton Street	365.2m <sup>2</sup>	12.185m	41.83m	rectangular
42A Brighton Street	469.0m <sup>2</sup>	12.185m	42.1m	rectangular
40 Brighton Street	438.2m <sup>2</sup>	12.185m	42.0m	rectangular
40A Brighton Street	498.2m <sup>2</sup>	12.185m	41.93m	rectangular
38 Brighton Street	438.2m <sup>2</sup>	12.185m	42.0m	rectangular
38A Brighton Street	499.2m <sup>2</sup>	12.185m	41.93m	rectangular
30A Brighton Street	539.0m <sup>2</sup>	15.23m	35.43m	rectangular
56 Brighton Street	517.0m <sup>2</sup>	15.5m	41.5m and 26.0m	irregular
62 Brighton Street	504.0m	15.24m	41.5m and 24.765m	irregular

***(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development.***

Comment:

The proposed development is located within the R2 Low Density Residential zone and therefore this objective is not applicable.

***(c) to protect the integrity of land holding patterns in rural localities against fragmentation.***

Comment:

The subject site is not located within a rural locality and therefore this objective is not applicable.

***(d) to achieve low intensity of land use in localities of environmental significance.***

Comment:

The subject site is not located within an area of environmental significance and therefore this objective is not applicable.

***(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland.***

Comment:

The subject site is not located within a bushfire prone area.

***(f) to protect and enhance existing remnant bushland.***

Comment:

There is no existing remnant bushland identified on site.

However, as detailed previously in the report, a total of eight (8) trees are required to be removed as part of the proposed subdivision and future development of the site. Three (3) small to medium size canopy trees located within the rear portion of the site are to be retained.

The Arboricultural Assessment Report prepared by Tree Consulting By Jo (dated 29 February 2016) submitted with the application concludes that these trees are identified as being either exempt species under the WDCP 2011, of low retention value or poor structural condition or not considered significant or worthy of being retained and restricting the future development on the site.

Also, it is expected that the future development of each allotment will include a satisfactory landscape setting, including locally native tree and understorey species.

***(g) to retain and protect existing significant natural landscape features.***

Comment:

As detailed above, there are no significant natural landscape features identified on site apart from the trees proposed to be removed.

***(h) to manage biodiversity.***

Comment:

This objective is not applicable to this application.

***(i) to provide for appropriate stormwater management and sewer infrastructure.***

Comment:

A concept inter-allotment drainage system was submitted as part of the proposed subdivision to demonstrate the appropriate management of stormwater.

**What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R2 Low Density Residential zone.

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The development provides for the housing needs of the community in providing two (2) new residential allotments that are capable of providing residential accommodation.

It is considered that the development satisfies this objective.

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

Comment:

The development is located within the R2 Low Density Residential zone and will provide two (2) new residential allotments. In this regard, this objective is not applicable.

- ***To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.***

Comment:

The proposal seeks to subdivide one residential lot into two lots. The indicative building footprints submitted with the application adequately demonstrate residential development can be provided on the lots, incorporating landscaped settings that are in harmony with the natural environment of Warringah.

It is considered that the development satisfies this objective.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?**

(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.***

Comment:

The proposal seeks to vary Clause 4.1 - Minimum Subdivision Lot Size Development Standard. In doing so, the variation will provide an appropriate degree of flexibility with regard to the proposed development, in allowing the creation of an additional residential allotment which will provide for the housing needs of the community.

***(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.***



Comment:

The variations sought to Clause 4.1 - Minimum Subdivision Lot Size Development Standard provide a better outcome in terms of providing an additional residential allotment within the R2 Low Density Residential zone which is consistent with the subdivision character of the locality.

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

(3) Development consent must not be granted 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.***

Comment:

The applicant has provided a written request which adequately justifies the contravention of the Development Standard, Clause 4.1 - Minimum Subdivision Lot Size for the following reasons:

- The resultant subdivision pattern is consistent with the existing subdivision pattern of the immediate and surrounding locality; and
- The subdivision will provide lots that are capable of accommodating future dwellings which comply with Council's planning requirements and will provide suitable amenity for occupants and neighbours.

The justification provided by the Applicant for the Clause 4.6 Variation is concurred with.

(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.***

Comment:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone in the WLEP 2011. Also, it is considered that the proposal satisfies the objectives of the development standard and that the environmental planning grounds for a departure from the development standard are sufficient and

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considered to be consistent with recent Land and Environment Court case decisions, including *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 9, *Moskovich v Waverley Council* [2016] NSWLEC 1015, *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 and *Wehbe v Pittwater Council* [2007] NSWLEC 827 42.

## ***(b) the concurrence of the Director-General has been obtained***

### Comment:

Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General 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 Director-General for the variation to the Minimum Subdivision Lot Size Development Standard is assumed.

## **Warringah Development Control Plan**

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall Height	7.2m	<b>Concept Dwelling 1</b>		
		Not provided	N/A	Capable of complying*
		<b>Concept Dwelling 2</b>		
		Not provided	N/A	Capable of complying*
B3 Side Boundary Envelope	5.0m x 45°	<b>Concept Dwelling 1</b>		
		Not provided	N/A	Capable of complying*
		<b>Concept Dwelling 2</b>		
		Not provided	N/A	Capable of complying*
B5 Side Boundary Setbacks	0.9m	<b>Concept Dwelling 1</b>		
		East: 0.995m	N/A	Yes
		West: 3.21m	N/A	Yes
		<b>Concept Dwelling 2</b>		
		East: 1.085 & 2.385m	N/A	Yes
		West: 1.0m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	<b>Concept Dwelling 1</b>		
		6.5m	N/A	Yes
		<b>Concept Dwelling 2</b>		
		8.0m	N/A	Yes
B9 Rear Boundary Setbacks	6.0m	<b>Concept Dwelling 1</b>		

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D1 Landscaped Open Space (LOS) and Bushland Setting	40%	11.546m	N/A	Yes
		<b>Concept Dwelling 2</b>		
		10.56m	N/A	Yes
		<b>Lot 1</b>		
		Not provided	N/A	Capable of complying*
		<b>Lot 2</b>		
		Not provided	N/A	Capable of complying*

**\*Note:** The above relates to indicative building footprints for each lot which were submitted with the development application. The building footprints are conceptual only and do not form part of any consent for this development application. Compliance is to be achieved under a separate development application.

## Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1 Subdivision	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	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 Private Property Tree Management	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
<b>Lot requirements</b>	R2 Low Density Residential zone requirements:	Lot 1 width: 12.19m (north/south boundary)	Yes with exception of the width of each lot.
	Proposed new allotments:	depth: 41.835m (east/west)	The extent of non-

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	<p>a) Minimum width: 13 metres</p> <p>b) Minimum depth: 27 metres; and</p> <p>c) Minimum building area: 150m<sup>2</sup></p>	<p>boundary) building area: 170m<sup>2</sup></p> <p>Lot 2 width: 12.19m (north/south boundary) depth: 41.835m (east/west boundary) building area: 212m<sup>2</sup></p>	<p>compliance is minor, being 6.2% (0.81m) and the generous depth of each lot will adequately compensate for the narrow width of each lot.</p> <p>Further, the location of the building footprints shows that a dwelling can be provided on each lot whilst satisfying residential amenity, including access to sunlight, privacy and visual outlook impacts and private open space.</p> <p>A condition is included in the Recommendation requiring the existing dwelling house to be demolished prior to issue of the subdivision certificate so that the newly created lots will be vacant and can be developed for a dwelling house under separate development applications.</p>
<b>Access</b>	<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</p>	<p>The proposed right of way (ROW) will service two (2) lots.</p> <p>Each lot will have access to the common driveway (ROW) which provides vehicular access to Brighton Street via a single driveway entry point.</p> <p>The applicant intends to provide necessary services beneath the accessway.</p> <p>Each lot will can readily provide a turning circle to exit in a forward direction.</p> <p>The design of the new driveway has been included in the detail prepared by Michal Korecky Ltd. The</p>	<p>Yes with exception of the accessway width.</p> <p>In this regard, the minimum required width is 3.5m for the driveway, plus 0.5m for services, hence an overall width of 4.0m.</p> <p>Council's Development Engineer has not raised concern with the 3.0m wide driveway which will service two lots. Further, the <i>Assessment of Proposed Vehicle Access and Carparking Arrangements</i> report submitted with the application concludes that <i>"the width of the proposed accessway is compliant with the relevant requirements in 'AS/NZS</i></p>

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transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.

Driveways in excess of 200 metres will not be allowed for residential development.

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.

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

new driveway will comfortably comply with Council's access grades and levels requirements.

The ROW provides access to two lots with a minimum width of 3.0m which is less than Council's minimum standard of 3.5m.

Council Engineer and Traffic Engineer do not raise concern with the ROW subject to a condition for the provision of a passing bay on the ROW.

*2890.1:2004' for vehicle access and are considered acceptable having regard to the residential nature of the development and the low traffic flows involved".*

A condition is included in the Recommendation for a passing bay to be provided on the driveway. Also, a condition is included in the Recommendation for the driveway to be constructed prior to issue of the subdivision certificate so that access is provided to proposed lot 2.



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	<table><tr><td></td><td>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><td>Number of lots to be serviced</td><td>Additional width to be provided in Right of Carriageway (m)</td></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>		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		
	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 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</p>	<p>The application has been referred to Council's Development Engineer who did not raise any objection to the proposal subject to conditions which address stormwater drainage and disposal, vehicle, crossings, easement requirements and certification of utility services.</p> <p>The subdivision design will not have any adverse impact upon the solar access of each dwelling due to the satisfactory orientation, shape and size.</p>	Yes								

# NORTHERN BEACHES COUNCIL

	to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.		
<b>Drainage</b>	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.	A concept inter-allotment drainage system was submitted as part of the proposed subdivision to demonstrate the appropriate management of stormwater.	Yes
<b>Restrictions</b>	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.	Conditions are imposed which require Positive Covenants and a Right of Carriageway to be to be created on the final plan of subdivision and accompanying 88B instrument.	Yes
<b>Environmentally constrained land</b>	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.	The site is not environmentally constrained land by virtue of the matters nominated nor does it contain any notable environmental features or threatened species. Conditions are imposed for the protection of the Macadamia tree	Yes

# NORTHERN BEACHES COUNCIL

	Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	located within the southern portion of the adjoining property to the west, No. 46 Brighton Street. Also, three (3) small to medium size canopy trees located within the rear portion of the site are to be retained by the development.	
<b>Bushfire</b>	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.	N/A	N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

## THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

## CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

## POLICY CONTROLS

### Warringah Section 94A Development Contribution Plan

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

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2016/0307 for Subdivision of one lot into two lots and demolition of a dwelling house on land at Lot 42 DP 14450, 44 Brighton Street, FRESHWATER, 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
Survey Report	17 November 2015	Adam Clerke Surveyors
Engineering Plans		
Drawing No.	Dated	Prepared
Easement Plan and Driveway Longitudinal Section 16060 Issue 1	23/05/16	Michal Korecky
Driveway Plan and Driveway Longitudinal Section 16060 Issue 1	23/05/16	Michal Korecky

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Assessment Report	29 February 2016	Tree Consulting

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

c) No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

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. (DACPLB01)

## 2. **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 (DACPLB09)

3. **Prescribed conditions (Demolition):**

(a) 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 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
- (ii) 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.

(b) 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.

(c) 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.

Reason: Legislative Requirement (DACPLB09)

## 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) 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.

(c) 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.

(d) 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.

(e) 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.

(f) Where works are to be carried out to a Class 1a building, smoke alarms are to be installed throughout all new and existing portions of that Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No building, demolition, excavation or material of any nature 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) All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary

and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

(k) 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.

(l) 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.

(m) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at [www.warringah.nsw.gov.au](http://www.warringah.nsw.gov.au)

(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.

(o) New solid fuel burning heaters or existing solid fuel heaters affected by building works must comply with the following:

(1) AS 2918:2001 Domestic Solid Fuel Burning Appliances – Installation.

(2) AS 4013:2014 Domestic Solid Fuel Burning Appliances – Method of Determination of Flue Gas Emissions.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

## 5. **General requirements (Demolition):**

(a) Unless authorised by Council:

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) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) 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.

(d) 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.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB (A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy. )

(i) 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.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

## 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 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, 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.warringah.nsw.gov.au/your-council/forms](http://www.warringah.nsw.gov.au/your-council/forms)).

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

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

### 7. **On-site Stormwater Detention Compliance Certification**

Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Warringah Council's "On-site Stormwater Detention Technical Specification" are to detail a Site storage volume of 11cumecs and Permissible Site Discharge of 20.5 Litres/Sec.

Drainage plans prepared by a suitably qualified engineer demonstrating compliance 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. (DACENC03)

### 8. **Submission of Engineering Plans**

Engineering plans are to be submitted to the Certifying Authority for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the driveway, passing bay and stormwater drainage which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy.

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

Reason: To ensure compliance with Council's specification for engineering works. (DACENC08)

### 9. **Vehicle Crossings Application Formwork Inspection**



An application for street levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid.

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

Reason: To facilitate suitable vehicular access to private property. (DACENC12)

10. **Vehicle Driveway Gradients**

Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in Council's Minor Works Policy.

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

Reason: To ensure suitable vehicular access to private property. (DACENC13)

11. **Utilities Services**

Prior to the issue of the Construction Certificate, evidence is to be submitted to the Certifying Authority that

(a) A letter from the telecommunications service provider confirming that satisfactory arrangements have been made for the provision of underground telecommunications for the approved development have been made; and

(b) Evidence that notification has been received from an Electricity Service Provider of electricity supply requirements for the development can be provided.

Reason: To ensure that services have been provided as required by this consent. (DACENC15)

12. **Provision a vehicle passing bay**

A passing bay is to located within the proposed right of way 10m in length by 5m wide in accordance with Councils Subdivision DCP.

Details are to be incorporated into the engineering driveway plans and submitted to the accredited certifier for approval prior to the issue of the construction certificate.

Reason: To enable safe vehicle movement. (DACENCPCC4)

13. **Waste Management Plan**

A waste management plan that addresses Clauses C8 and C9 in the Warringah DCP must be prepared for this development.

Details of the method of transportation and location of the waste/recycling centres are to be included in the plan

Details demonstrating compliance must be provided to the Principal 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.(DACHPC03)

## 14. **Tree protection**

(a) Existing trees which must be retained

All trees not indicated for removal in the Arboricultural Assessment Report dated 29 February 2016 prepared by Joanne Leigh.

(b) Tree protection

- i) No tree roots greater than 50mm 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 50mm 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. (DACLAC01)

## 15. **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. (DACPLC02)

Advice to Applicants: At the time of determination in the opinion of Council, the following (but not limited to) Australian Standards are considered to be appropriate:

- (a) AS2601.2001 - Demolition of Structures\*\*
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings\*\*
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting\*\*
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) \*\*
- (e) AS 4970 - 2009 'Protection of trees on development sites'\*\*\*
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking\*\*
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities\*\*
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities\*\*
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking\*\*
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities\*\*
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set\*\*
- (l) AS 1428.1 - 2009\* Design for access and mobility - General requirements for access - New building work\*\*
- (m) AS 1428.2 - 1992\*, Design for access and mobility - Enhanced and additional

requirements - Buildings and facilities\*\*

(n) AS 4674 Design, construction and fit out of food premises

(o) AS1668 The use of mechanical ventilation

\*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website

[http://www.humanrights.gov.au/disability\\_rights/buildings/good.htm](http://www.humanrights.gov.au/disability_rights/buildings/good.htm)

\*\*Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to. (DACPLC02)

## 16. **Compliance with standards (Demolition):**

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 Council prior to the commencement of demolition works.

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

Advice to Applicants: At the time of determination in the opinion of Council, the following (but not limited to) Australian Standards are considered to be appropriate:

(a) AS2601.2001 - Demolition of Structures\*\*

(b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings\*\*

(d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) \*\*

(e) AS 4970 - 2009 'Protection of trees on development sites\*\*

\*\*Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.(DACPLC02)

## **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

### 17. **Stormwater Pipeline Construction**

The connection to Council's nearest stormwater drainage system is to be the existing gully pit in Brighton Street. The applicant shall construct the pipeline in accordance with Council's specification for engineering works (see [www.warringah.nsw.gov.au](http://www.warringah.nsw.gov.au)) and shall reconstruct all affected kerb and gutter, fully reconstruct the adjacent vehicular crossing and household stormwater connections in accordance with Council's specifications. All works shall be undertaken at the applicant's cost, and upon completion certified by an appropriately qualified and practicing Civil Engineer.

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

Reason: To ensure compliance of drainage works and vehicle crossing reinstatement with Council's specification for engineering works. (DACENE03)

### 18. **Vehicle Crossings**

The provision of one vehicle crossing 3 metres wide at kerbline to 5m wide at the boundary in accordance with Warringah Council Drawing No A4-3330/ Normal and specifications. 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.

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

Reason: To facilitate suitable vehicular access to private property. (DACENE05)

19. **Civil Works Supervision**

All civil works including right of way and drainage works approved in the Construction Certificate are to be supervised by an appropriately qualified and practising Civil Engineer.

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

Reason: To ensure compliance of civil works with Council's specification for engineering works. (DACENE06)

20. **Layback Construction**

A layback 3 metres wide (excluding the wings) is to be constructed in accordance with Warringah Council Drawing No A4-2276 and specifications.

Reason: To ensure suitable vehicular access to private property. (DACENE08)

21. **Maintenance of Road Reserve**

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

Reason: Public Safety. (DACENE09)

22. **Notification of Inspections**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines within Council's road reserve.
- (c) Prior to connection into stormwater gully pits
- (d) Prior to pouring of vehicle crossings

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification.

Reason: To ensure new Council infrastructure is constructed to Council's requirements. (DACENE10)

23. **Trees Condition**

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.

- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees. (DACLA03)

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

### 24. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

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

**Note:** The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

### 25. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management. (DACPLF01)

### 26. **Undergrounding of Telecommunications Services**

Arrangements are to be made for the provision of underground telecommunications services to the building.

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

Reason: Provision of telecommunication facilities in a manner that facilitates the future underground provision of cable services. (DACPLF06)

## CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA

**SUBDIVISION OR SUBDIVISION CERTIFICATE**

**27. 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.

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. (DACENH03)

**28. Right of Carriageway**

A right of carriageway (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and accompanying 88B instrument to include all vehicular access and maneuvering areas including the passing bay of minimum width 5m and length 10m .

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. (DACENH04)

**29. Restriction as to User for Vehicular Access**

A restriction as to user shall be incorporated in the title of Lot One that shall preclude that lot from utilising its frontage for vehicular traffic except for the section created as a Right of Carriageway. The wording of the restriction of use is to be prepared by a surveyor, with terms acceptable to Council.

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 Council policy for vehicular access. (DACENH08)

**30. Stormwater Drainage and Utility Services Plan**

A plan of subdivision identifying the location of water, gas, telephone, electricity and stormwater drainage in relation to boundaries and/or relevant easements, prepared by a registered surveyor is to be submitted to Council.

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

Reason: To ensure that services have been provided with appropriate easements as required by the Conveyancing Act 1919. (DACENH10)

**31. Survey Plan - Construction Identification**

A declaration by a registered surveyor shall be provided to Council as evidence that all construction has been effected within the appropriate property, easement boundaries and rights of carriageway. This shall be in the form of a copy of the final subdivision or easement plan, with the distances from the boundaries to the edges of these structures endorsed in red thereon and signed by the surveyor.

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



prior to the issue of the Subdivision Certificate.

Reason: To ensure accurate location of buildings, access and services (DACENH12)

32. **Sydney Water Compliance Certification**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from 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) <<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 charges to be paid. Please make early contact with the Co-ordinator, 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. (DACENH13)

33. **Certification of Utility Services**

The provision of all utilities/services and/or street lighting are to be certified by the relevant authority(s) and/or authorised contractor.

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

Reason: To ensure services have been provided in accordance with the relevant authorities requirements. (DACENH15)

34. **Easement for Drainage**

An easement for drainage (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision the accompanying 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. (DACENH16)

35. **Easement for Services**

An easement for services (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and the accompanying 88B instrument to ensure all utility services are 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.(DACENH18)

36. **Subdivision Certificate Application**

Prior to the issue of the Subdivision Certificate, a completed Subdivision Certificate form, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919 are to be submitted to Council. Nine copies of the final plan of subdivision are to be submitted. 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. (DACENH24)

37. **Certification of the Stormwater Drainage and Driveway Construction**

The driveway, passing bay and drainage works are to be certified as constructed in accordance with the approved engineering plans and Councils Auspec One specification by the design engineer prior to the issue of the subdivision certificate. Work as executed plans for these works are to be prepared by a qualified surveyor to support this certification.

Reason: To ensure all engineering works are in accordance with Councils engineering specification Auspec One (DACENHPS1)

38. **Demolition of Existing Dwelling**

The existing dwelling house is to be demolished prior to issue of the Subdivision Certificate.

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

Reason: To ensure the future orderly development of the site. (DACENHPS2)

39. **Title Encumbrances**

All easements, rights of carriageway, positive covenants and restrictions as to user as indicated on the plans and required by this consent are to be created on the title naming Warringah Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land. (DACENHS14)

# ADAM CLERKE SURVEYORS PTY LTD

Incorporating PAUL KEEN & COMPANY  
LAND & ENGINEERING SURVEYORS  
Adam Clarke BSURV (Hons) USQ (REG'D SURV. M.I.S.AUST.)

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## SURVEY REPORT

P.O.BOX 175  
NEWPORT 2106.  
38 KEVIN AVENUE,  
AVALON 2107.

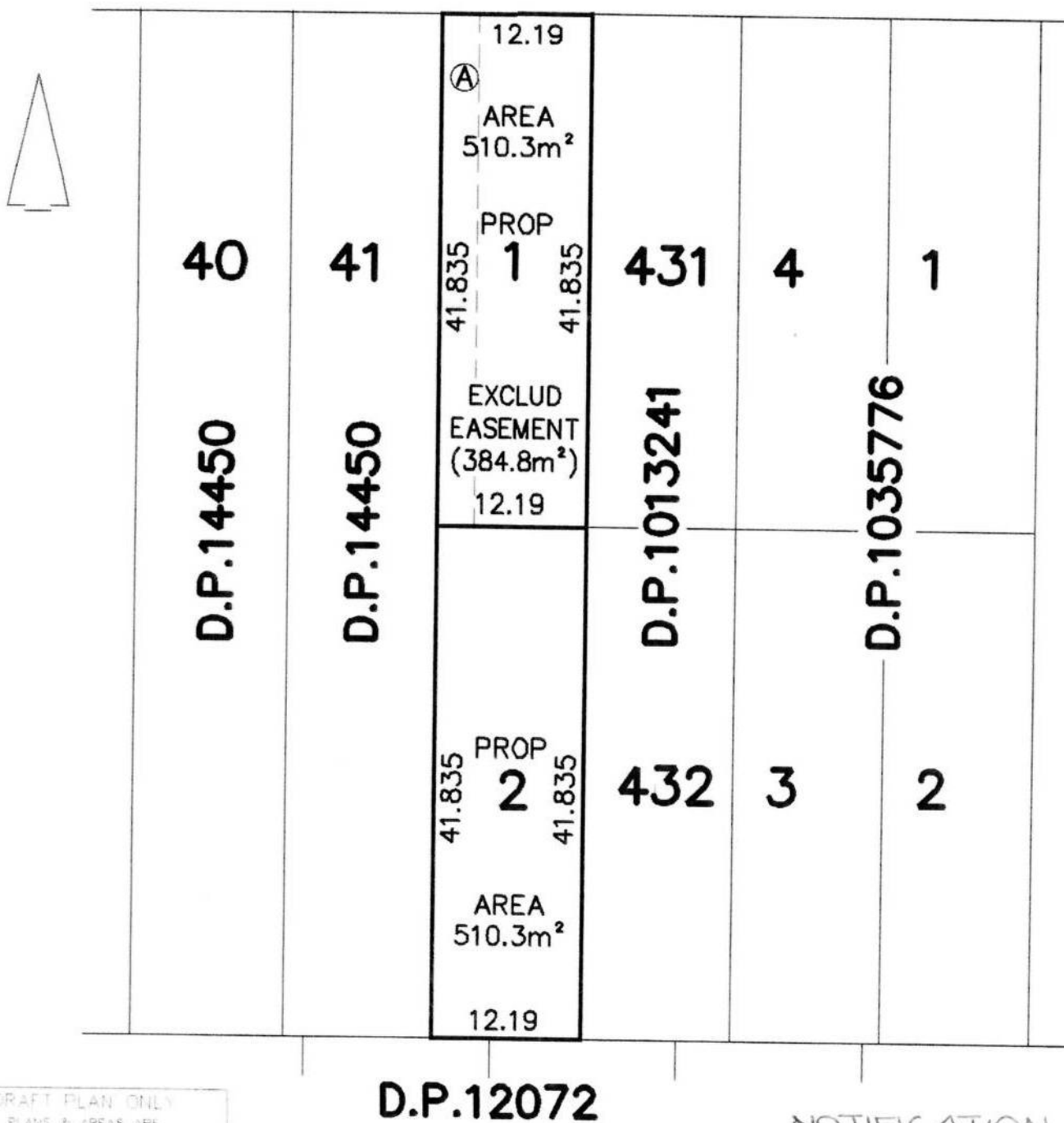
DATE: 17<sup>th</sup> Nov. 15  
REF: 19715A-3

SKETCH SHOWING PROPOSED SUBDIVISION OF  
No.44 BRIGHTON STREET, FRESHWATER.

A ... RIGHT OF CARRIAGEWAY, EASEMENT FOR SERVICES  
3 WIDE

*ACL*  
Adam Clarke

## BRIGHTON STREET



DRAFT PLAN ONLY

PLANS & AREAS ARE  
SUBJECT TO FINAL DESIGN & SURVEY

NOTIFICATION PLAN