

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held in the Walamai Room, Civic Centre Dee Why on

WEDNESDAY 19 JULY 2017

Beginning at 11.40 am for the purpose of considering and determining matters included in this agenda.

Peter Robinson
Executive Manager, Development Assessment

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 19 July 2017
in the Walamai Room, Walamai Room, Civic Centre Dee Why
Commencing at 11.40 am**

1.0	APOLOGIES & DECLARATIONS OF PECUNIARY INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel	2
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3.1	6 Chandos Street, Manly Vale - Subdivision of three (3) lots into (2) lots including associated infrastructure works.....	2

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL

RECOMMENDATION

NIL

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 **6 CHANDOS STREET, MANLY VALE - SUBDIVISION OF THREE (3) LOTS INTO (2) LOTS INCLUDING ASSOCIATED INFRASTRUCTURE WORKS**

REPORTING OFFICER **Steve Findlay**

TRIM FILE REF **2017/228396**

ATTACHMENTS **1** [↓](#) **DDP Assessment Report**
 2 [↓](#) **Site Plan**

PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2017/0115 for Subdivision of three (3) Lots into two (2) Lots including associated infrastructure works on land at Lot 21 DP 976580, 6 Chandos Street, MANLY VALE, Lot 19 DP 976580, 6 Chandos Street, MANLY VALE, Lot 23 DP 976580, 6 Chandos Street, MANLY VALE, subject to the conditions outlined in the report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/0115
Responsible Officer:	Nick England
Land to be developed (Address):	Lot 21 DP 976580, 6 Chandos Street MANLY VALE NSW 2093 Lot 19 DP 976580, 6 Chandos Street MANLY VALE NSW 2093 Lot 23 DP 976580, 6 Chandos Street MANLY VALE NSW 2093
Proposed Development:	Subdivision of three (3) Lots into two (2) Lots including associated infrastructure works
Zoning:	LEP - Land zoned R2 Low Density Residential LEP - Land zoned R2 Low Density Residential LEP - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Development Determination Panel
Land and Environment Court Action:	No
Owner:	Genevieve Dela Cruz Giorla Sunny Hao Cai
Applicant:	Sunny Hao Cai
Application lodged:	13/02/2017
Application Type:	Local
State Reporting Category:	Subdivision only
Notified:	28/02/2017 to 15/03/2017
Advertised:	Not Advertised, in accordance with A.7 of WDCP
Submissions:	3
Recommendation:	Approval
Estimated Cost of Works:	\$ 22,715.00

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:

- 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

Property Description:	<p>Lot 21 DP 976580 , 6 Chandos Street MANLY VALE NSW 2093</p> <p>Lot 19 DP 976580 , 6 Chandos Street MANLY VALE NSW 2093</p> <p>Lot 23 DP 976580 , 6 Chandos Street MANLY VALE NSW 2093</p>
Detailed Site Description:	<p>The subject site consists of three (3) allotments located on the western side of Chandos Street.</p> <p>The site is regular in shape with a combined frontage of 18.29m along Chandos Street and a depth of 40.235m. The site has a surveyed total area of 735.7m², with each of the 3 existing allotments being 245m² in area.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two storey dwelling house and swimming pool.</p> <p>Surrounding development consists of residential dwellings.</p> <p>The site has an easterly aspect with no significant vegetation.</p>

Map:



SITE HISTORY

Site history relevant to the proposal includes the following:

26 March 1943: Lots 19, 21 and 23 of DP 976580 (the subject land) created as part of the "Dalley Estate".

C281/58: Approval for "WD" (weatherboard dwelling) dated 1958, located on Lots 19, 21 and 23.

C690/68: Approval for "Brick conversion" of the existing dwelling, dated 25 July 1968.

283/78: Approval for swimming pool dated 31 January 1978.

412/86: Approval for swimming pool dated 17 February 1986.

PROPOSED DEVELOPMENT IN DETAIL

The application involves the subdivision of the existing property at No.6 Chandos Street to create two (2) allotments from the existing three (3) allotments.

Proposed Lot 1 and Lot 2 will have an area of 367.9m², a width of 9.1m and a length of 40.2m.

Minor physical works are proposed apart from works required to connect to utilities (excluding drainage) to individual allotments.

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&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, permits Council to request additional information and therefore consider the number of days taken in this assessment in light of this clause within the Regulations. However, no additional information was requested.</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 prescribed 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 79C 'Matters for Consideration'	Comments
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	(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. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” 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 3 submission/s from:

Name:	Address:
Mr Geoffrey Simon Piper	3 Chandos Street MANLY VALE NSW 2093
Mrs Mary-Anne Matthews	10 Chandos Street MANLY VALE NSW 2093
David Peter Norris	8 Chandos Street MANLY VALE NSW 2093

The issues raised within the submissions are addressed as follows:

- ***The proposed allotment sizes represent a significant non-compliance with the subdivision development standard of Warringah Local Environmental Plan 2011 (WLEP 2011).***

Comment: An assessment of the application against the requirements and objectives of the WLEP 2011 is provided elsewhere in this report. In summary, the variation to the minimum allotment size development standard in WLEP 2011 is considered appropriate and justified under the circumstances and non-compliance with this standard does not warrant refusal of the application.

- ***The justifications put forward in the Statement to vary the subdivision development***

standard does not comply with Clause 4.6 of WLEP 2011.

Comment: A detailed consideration of the application against the requirements of Clause 4.6 of WLEP 2011 is provided elsewhere in this report. In regard to the documentation provided with the application, this information is considered adequate to satisfy the provisions of WLEP 2011.

- ***Insufficient allotment width is proposed to meet the requirements of the Warringah Development Control Plan 2011.***

Comment: An assessment of the application against the requirements and objectives of the WDCP 2011 is provided elsewhere in this report. In summary, the variation to the minimum allotment width in Part C1 of WDCP 2011 is considered appropriate under the circumstances and non-compliance with this standard does not warrant refusal of the application.

- ***The proposal should be assessed in accordance with Council's existing controls and not compared against the hypothetical development of the existing lots.***

Comment: The numerical development standards contained within WLEP 2011 are not absolute standards and always remain subservient to their objectives. These standards can be varied, subject to it being adequately demonstrated that it is both unreasonable and unnecessary to apply the standard. This is a long held principle in the assessment of applications under the existing legislation. Strict compliance with the current development standards and controls is not mandatory under the circumstances. Smaller lot sizes than the minimum under WLEP 2011 are appropriate in this case, as discussed elsewhere in this report.

It is considered reasonable to compare and contrast the proposed subdivision with potential development on the existing three allotments, as the existing allotments are legally created allotments, upon which development for residential purposes cannot be restricted. Furthermore, discounting the subject site, there are approximately 23 similar sized allotments (to the current 3 allotments) in existence on Chandos Street, which could be also developed individually for residential purposes.

In summary, the development potential of the existing allotments are a logical consideration in the assessment of the current application.

- ***The impacts of the subdivision on the existing streetscape will be adverse and have not been adequately elaborated upon in the information provided with the application.***

Comment: Despite the application only consisting of subdivision (no dwellings are proposed), it is acknowledged that the creation of the two new allotments, will at some stage result in physical works (i.e. construction of a dwelling house) which will have a level of impact including on the streetscape. However, the full determination of this impact can only be determined when physical works are proposed.

Notwithstanding, the proposed allotments are of an area considered capable of being developed for the future purposes of a dwelling house, consistent with the relevant objectives. However, it is noted that the proposed lots will not be so difficult to develop as to warrant dwelling house designs (even concept designs) at the subdivision stage. The consideration of these objectives can be undertaken when a development application for a dwelling house is lodged.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Development Engineers	No objections to the subdivision subject to conditions.

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 proposed subdivision.

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	% Variation	Complies
Minimum subdivision lot size:	600m ²	367.9m ²	39	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	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.1 Minimum subdivision lot size

Pursuant to Section 79C(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.

4.6 Exceptions to development standards

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

Requirement:	600m ²
Proposed:	367.9m ²
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical

If numerical enter a % variation to requirement	39%
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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 limitation 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: The pattern, size and configuration of existing lots in Chandos Street illustrates a significant degree of variation. When the land was originally subdivided in 1943 to create the "Dalley Estate", the original intention was to create "workers" style housing on modestly-sized allotments of around 245m² in area. However, these allotments were purchased in multiples of either two or three and subsequently developed into larger style dwellings on several allotments, generally having a combined area from 500m² to 735m² in area.

Despite dwellings being built across the large majority of these allotments, they were never consolidated and hence legally remain in existence. Approximately 23 allotments in Chandos Street (excluding the subject site) are around 245m² in area, representing over half of all the allotments in Chandos Street. This similar pattern is also observed in Marinella Street to the west of the site, which is also within the Dalley Estate.

The existence of significantly smaller sized allotments in this locality must be recognised and despite being less than the current minimum allotment size, can nonetheless be legally developed for residential uses. Recent development consents have been issued by Council on these smaller sized allotments, at Nos.20, 20A, 20B, 21, 21A, 21B and 21C Marinella Street.

Of most relevance to the current application, is a similar consent (DA2003/0663) which was granted in 2003 for subdivision at Nos.2 and 4 Chandos Street, which created 2 allotments from the 3 original allotments. This land, immediately to the north of the subject site, has since been developed to provide 2 new dwellings in accordance with the built form controls applying to dwelling houses.

In summary, the proposed subdivision, despite the variation proposed to the minimum subdivision lot size under the WLEP, is consistent with this objective, having regard to:

- the varied allotment sizes evident in Chandos Street;
- the context of the recently approved subdivision for 2 allotments immediately to the north of the site; and
- the recently approved dwellings on smaller sized allotments to the west in Marinella

Street.

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

Comment: This objective is not applicable, as these land uses are not permissible in the R2 zone.

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

Comment: This objective is not applicable, as the land is not zoned for rural purposes nor contains an existing rural use.

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

Comment: This objective is not applicable, as the land has not been identified in any policy or study as being environmentally significant.

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

Comment: The land is not bushfire prone, therefore this objective is not applicable to the proposed development.

(f) to protect and enhance existing remnant bushland.

Comment: No remnant bushland exists on the site. Therefore, this objective is not applicable to the proposed development.

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

Comment: No significant landscape features exist on the site. Therefore, this objective is not applicable to the proposed development.

(h) to manage biodiversity.

Comment: This objective is not applicable to the proposed development.

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

Comment: The proposed size of the allotments will not preclude future provision of stormwater and sewer infrastructure on the land, to meet this objective.

What are the underlying objectives of the zone?

In assessing the developments 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 proposed subdivision will permit the development of the land for residential purposes, satisfying the aspect of the objective that seeks provide for housing needs. With regard to the requirement to provide this housing within a low density residential environment, it is reasonable to assume that, as the proposed subdivision will result in one less allotment currently existing in Chandos Street, this will result in the retention of a low density residential environment in the immediate area. The proposed development therefore 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 does not propose a land use other than the existing residential use. Hence, this objective is not applicable to the proposed development.

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

Comment: No dwellings are proposed as part of this application. Hence, this objective is not applicable to the proposed development.

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: As discussed previously, the size of allotments in Chandos Street demonstrates significant variability due to the historical pattern of subdivision and development in this area. These particular circumstances, which are atypical compared to other R2 zoned residential areas, are considered appropriate to permit a degree of flexibility in the consideration of the relevant development standards. The application is hence consistent with this objective.

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

Comment: The proposed subdivision will result in two allotments of approximately 368m² in area, which are larger lots than the three (3) existing allotments which are approximately 245m² in an area each. The benefit of this re-subdivision is twofold. Firstly, that there will be one less allotment in Chandos Street; and the new allotments will be a larger size than the existing allotments. This will achieve a better planning outcome by reducing the potential housing density in Chandos Street and further reducing potential impacts on the immediate area in respect to traffic generation and visual impact.

Secondly, by creating larger allotments than those that are existing, this will provide greater site areas in order to minimize the impacts on adjoining properties by any new development. The larger lot sizes will provide for greater flexibility in housing design and allow greater compliance with the planning controls applying to dwelling-houses.

(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 benefits of the proposed subdivision have been previously discussed within this report. Given the atypical nature of the existing allotment pattern in Chandos Street, requiring the application to comply with the minimum lot size development standard is considered both unreasonable and unnecessary as it will promote a better planning outcome than what is presently allowed. The environmental planning grounds to support the variation have also been discussed previously in this report and in summary these are considered sufficient to justify the variation to the development standard. Therefore, the application is consistent with the requirements of Clause 4.1(3) of WLEP 2011.

(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

Comment: The documentation provided with the application has been reviewed as part of the assessment of this application. The justifications put forward in this documentation are considered adequate to address the requirements of subclause (3).

(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: The application has demonstrated consistency with the objectives of the development standard relevant to subdivision and the objectives of the R2 Low Density Residential zone in the WLEP 2011.

(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

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
C5 Erosion and Sedimentation	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Private Property Tree Management	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>Width: 9.145m Length: 40.235m Building area: 150m²</p>	<p>NO - a 30% variation with the minimum width requirement is proposed. Refer to discussion below this table.</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</p>	<p>Not applicable - no works are proposed, however sufficient access to Chandos Street is in principle achievable.</p>	<p>Not applicable.</p>

the Council's satisfaction.

Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.

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.

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

	<p>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		
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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	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	Not applicable - no works proposed.	Not applicable.														

	<p>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>		
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>Council's Development Engineers have advised that this in principle is possible to achieve in future development.</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</p>	<p>Not proposed at this stage.</p>	YES, subject to condition.

	approval of the subdivision is to be protected by a positive 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.	Not applicable - no specific environmental constraints or risks exist on the land.	Not applicable.
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.	Not applicable.	Not applicable.

Description of non-compliance

The proposed allotment width of 9.145m represents a 30% variation with the minimum width of 13m.

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:

Given that the proposal relates to a two lot subdivision on land that currently consists of three allotments, the potential density of development in Chandos Street will be reduced by one allotment as a result of the proposed subdivision. The proposed width is hence considered to

satisfy this objective.

- ***To limit the impact of new development and to protect the natural landscape and topography.***

Comment:

The proposed width of 9.145m will increase the existing allotment widths for the 3 lots comprising the subject site, which are approximately 6.1m. As no building works are proposed in this application, the exact extent of the impact of any new development is indeterminate at this stage. Notwithstanding, as the proposed subdivision will increase the existing lot widths, the proposed widths are sufficient to limit the impact of any new development on the lots. No particular natural landscape or topographic features exist on the site that will be adversely effected by the proposed allotment width. The development is hence consistent with this objective.

- ***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 proposed allotment widths are considered sufficient to achieve the objectives of these requirements, whilst also permitting the site to be developed for residential purposes. The application is therefore consistent with this objective.

- ***To maximise and protect solar access for each dwelling.***

Comment:

Sufficient widths are provided to ensure that any new development on the allotments can comply with the relevant built form standards and therefore provide sufficient area to permit adequate solar access for new and existing dwellings. The development is therefore consistent with this objective.

- ***To maximise the use of existing infrastructure.***

Comment:

Adequate infrastructure exists to support the proposed subdivision.

- ***To protect the amenity of adjoining properties.***

Comment:

Despite the variation, sufficient allotment widths are proposed to comply with this objective.

- ***To minimise the risk from potential hazards including bushfires, land slip and flooding.***

Comment:

No unusual risk in relation to bushfire, landslip or flooding exists on the site. The development is therefore consistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 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.

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.

Conclusions on Planning Assessment

The proposed subdivision relates to an area of Manly Vale which demonstrates an unusual subdivision pattern which dates back to the 1940's and is typified by small narrow lots.

The variation to the minimum subdivision allotment size under WLEP 2011 and the minimum lot width under WDCP 2011 are supported for the following reasons:

- The existing lot sizes in the street are highly variable and significantly undersized when compared to the current standards under WLEP 2011;
- The re-subdivision from 3 lots into 2 lots will result in larger lots which are more flexible and better able to accommodate new housing in accordance with the built form controls under the WLEP 2011 and WDCP 2011;
- The increase in the lot widths from the existing lots to the proposed lots will allow greater flexibility in house design and compliance with the built form controls under the WDCP 2011;
- The reduction of the number of lots in Chandos Street associated with this re-subdivision will result in a subdivision layout which is more consistent with the Aims of the Warringah Local Environmental Plan 2011 and the Objectives of the R2 Low Density Residential zone;
- The approval in 2003 of a similar subdivision on the adjoining property to the north at 2 and 4 Chandos Street; and
- The approval of dwellings on smaller sized allotments in Marinella Street in the same locality.

A detailed consideration of the relevant legislation, State and Council policies and the 3 submissions received during the notification period has been undertaken as part of this assessment.

No circumstances would warrant refusal of the application and therefore it is recommended that the application be approved.

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 DA2017/0115 for Subdivision of three (3) Lots into two (2) Lots including associated infrastructure works on land at Lot 21 DP 976580, 6 Chandos Street, MANLY VALE, Lot 19 DP 976580, 6 Chandos Street, MANLY VALE, Lot 23 DP 976580, 6 Chandos Street, MANLY VALE, 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

Plans - Endorsed with Council's stamp		
Drawing Name / No.	Dated	Prepared By
14983subdivision Issue 2	07/06/16	C.M.S. Surveyors Pty. Ltd.

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)

FEES / CHARGES / CONTRIBUTIONS

3. 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).

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

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

4. 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) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (c) 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)

5. Sewer / Water Quickcheck

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

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

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACPLC12)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

6. 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)

7. 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.

8. Installation and Maintenance of Sediment Control

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Warringah Council Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites. (DACPLE02)

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

9. Reinstatement of Kerb

All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces. (DACENF03)

10. 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)

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

11. 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)

12. Services

All utilities/services and street lighting is to be installed by the applicant/developer. Certification is to be provided to Council stating the above requirement has been complied with.

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

Reason: Public safety and to ensure services have been provided for the newly created lots.

(DACENH09)

13. **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>> 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)

14. **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)

15. **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)

