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MEMORANDUM

DATE: 18 August 2023
TO: Northern Beaches Independent Assessment Panel
CC: Peter Robinson, Planning Assessments Manager
FROM: Kimberley Kavwenje, Planning Consultant
SUBJECT: DA2022/1944 – 30 & 32 Lakeview Parade, Warriewood

Dear Panel,

A submission by Rebecca Englund of Northern Beaches Planning has been received in relation to DA2022/1944. The submission disagrees with the Assessment Report's recommendation for refusal of the subject development application (DA) on the following grounds.

1. Impact to trees
2. Objectives of Zone
3. Dimensions
4. Setbacks
5. Landscape quality and area calculations
6. Amenity

Each of the above grounds is responded to below.

1. Impacts to trees.

The Applicant's arboricultural impact assessment (AIA) identifies six (6) additional Category A trees which would be impacted by the development over that proposed to be removed as part of the DA.

Three (3) trees (Trees 17, 47 and 48) are located within the future building envelopes. Trees 8 is located within the road reserve. Tree 9 is located within 34 Lakeview Parade. Tree 6 is located within Lot 1.

- a. *Proposed impacts arising from the subdivision works.*

Despite the comments of Council's Landscape Officer, the Applicant's own AIA indicates Tree 7 cannot be retained due to the major encroachment of the SRZ and TPZ. This is a position I agree with for the reasons outlined below.

Email correspondence with the Landscape Officer prior to the completion of the Assessment Report provided the following:

Both existing Brushbox street trees (7 and 8) are to be retained. Council does not support removal of public trees. The passing bay does not have / should not, be located on public land, especially when public assets (i.e., street trees) are impacted.



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Regardless of if one looks at the current layout with passing bay on public land and near tree 7, the fact remains that Brushbox trees are very adaptable to encroachment into the tree protection zone, hence the comment for tree root investigation, not that Landscape Referral are in favour of the passing bay upon public land as stated.

The Landscape Officer does not support the passing bay which impacts Tree 7. This necessity for the passing bay in the public domain is contrary to requirements of the Development Engineer, which requested the passing bay be provided.

The Applicant's plans show the passing bay within the road reserve.

The AIA includes the following comments relating to Tree 7 in the road reserve:

The tree is located within the nature strip. The proposed driveway crossover and passing bay will encroach into the Tree Protection Zone and the Structural Root Zone by up to 28% (25.3m²). The proposed stormwater pipe and pit encroach into the TPZ area by a further 11% (9.5m²). An existing dilapidated low retaining wall separates the tree from the site however taking into consideration the blue metal base proposed for the pit, the excavation depth is likely to exceed the depth of the retaining wall and its footing and may impact tree roots below.

In addition to the below ground impacts, canopy pruning will be required to facilitate the passing of vehicles using the driveway and bay. The proposed passing bay is set back 1.8 metres from the centre of the tree trunk. Up to 2.2 metres of vertical ground clearance will be required resulting in an impact to the trees visual amenity through canopy loss, noting the required canopy removal will increase in height with the gradient of the driveway. The combined below ground encroachments of up to 39% and the removal of an estimated 20% of the live canopy on one site is likely to impact the trees health and condition in the long term. The tree is therefore recommended for removal under the proposed works.

Despite the recommendation of the Applicant's arborist, the submission favours Council's Landscape Officer position that Tree 7 can be retained.

I am of the opinion root mapping is required to demonstrate retention of Tree 7 is possible due to the major encroachment and canopy pruning identified by the Applicant's arborist. This is consistent with Clause 3.3.3 of AS4970-2009.

The Assessment Report does incorrectly assume root mapping would be conditioned by Council's Landscape Officer. I do not believe root mapping should be conditioned, because the outcome of whether trees can be retained or not is unknown. It is more appropriate this be known as part of the DA assessment as required by the environmental assessment under s.4.15 of the Act.

No information has been submitted by the Applicant to demonstrate Tree 7 can be retained. Rather the submission relies entirely upon the Landscape Officer's referral response, which itself does not quantify how the retention of this street tree can be achieved. The email correspondence from Council's Landscape Officer only comments on the general robustness of the tree species.

The submission argues Tree 7, being in the road reserve, is subject to a separate approval process under the Roads Act 1993 if it was to be removed.



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The likely environmental impacts of the development must be considered as part of the DA assessment, as required by Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*. The assessment of Tree 7 cannot be deferred to another time. The impacts to Tree 7 only occur because of the proposed subdivision.

There are further Category A trees not considered in the Council's Landscape referral.

The Landscape referral does not specifically mention the major encroachment or impacts to Trees 6, 8 and 9. For Tree 9, which is located on a neighbouring property, there is a major encroachment of 29% within the TPZ due to the stormwater pipe proposed as part of the subdivision works.

The proposed stormwater pipe will also result in a major encroachment within the TPZ and SRZ of Tree 6 up to 19%. The Applicant's arborist report specially states, if this tree is to be retained in a viable condition, the proposed pipe must be installed without severing significant tree roots. There has been no information provided by the Applicant on how this will be achieved.

b. Potential impact arising from future dwellings.

The Landscape Officer does not assess impact to trees resulting from the building envelopes included in the Applicant's plans for the proposed development. As such, the Landscape Officer does not consider the impacts upon Trees 17, 47 and 48.

Tree 17 is located on proposed Lot 2, and Trees 47 and 48 on proposed Lot 4.

The trees can only be retained by sensitive construction methods and or design modifications. The AIA identifies the proposal will contribute to major encroachment into the TPZs. The AIA specifically states:

To ensure the trees are not adversely impacted by the construction, it must be demonstrated the following design and construction specifications can be implemented within the TPZ of the trees. If the construction cannot be completed in accordance with these specifications, the trees may not be viable for retention.

We note the Applicant's arborist recommends pier and beam footings as a measure of mitigating impacts to the trees.

I do not agree with the statement above by the Applicant's arborist. It is problematic to assume future development can retain these trees within the proposed lot configuration and building envelopes shown on the Applicant's plans.

The AIA identifies a major TPZ encroachment associated with Trees 47 (15%) and 48 (23%) and a minor encroachment of Tree 45 (4%). Any encroachment over 10% is defined as major under AS4970-2009.

No information has been submitted by the Applicant to locate the tree roots. When there is a major encroachment, root investigation by non-destructive methods and consideration of relevant factors listed in Clause 3.3.4 of AS4970-2009 is the next step.



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This step is necessary in establishing whether a tree can be retained despite the encroachment. Without such information, the retention of these trees cannot be ensured.

As mentioned, the Applicant's arborist recommends pier and beam footings as a measure of mitigating impacts to the trees. Insufficient information has been submitted to demonstrate the number, size, and location of piers for the elevated structures to confirm whether the major encroachments as proposed are sustainable as per the arborist's conclusions.

Council cannot be satisfied that the allotments can reasonably be developed. Insufficient information is submitted to provide certainty to Council on the resultant impacts that will occur from the creation of five allotments.

The tree impacts cannot be deferred and must be considered in determining the suitability of the subdivision.

The inability to confirm tree retention is one of the reasons why the Assessment Report recommends a DA which integrates the subdivision and buildings for the proposed development on site.

c. Characterisation of trees

The submission objects to the language used in the Assessment Report to describe trees, specifically the word 'significant'.

I agree the site contains no trees mapped as ecologically important and does not feature on the Biodiversity Values Map. There is nothing in the Assessment Report suggesting otherwise.

The proposal does however result in impacts to vegetation that is locally native and protected by Council. Furthermore, the vegetation occurs on land currently within a conservation land use zone.

Trees 42, 43 and 44 are protected trees and are rated A1 and A2 within the Applicant's arborist report. Trees 42, 43 and 44 have a height of 5m (as identified in the Applicant's arborist report) and cannot be removed without obtaining consent.

Category A trees are identified within the Applicant's arborist report as being important trees suitable for retention for more than 10 years and worthy of being a material constraint, therefore demonstrating their importance.

I also note that the Applicant fails to recognise the concluding sentence in relation to Lot 5 of the Assessment Report, which says the *concept plan demonstrates this site can reasonably be developed in accordance with PDCP*. The comments relating to vegetation on Lot 5 appear to be misdirected and fails to consider the concerns about vegetation on Lots 2 and 4.

2. Objectives of the Zone

The submission disagrees with the Assessment Report's conclusion that the proposed development fails to satisfy the objectives of the C4 and R2 zone.

For the reasons outlined in the Assessment Report I maintain the proposal fails to satisfy the objectives of the zone. I also note the following:



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- Regarding the conservation zone review, a draft LEP has not been prepared or exhibited and is therefore not imminent or certain. There is no statutory requirement for consideration of the Conservation Zones Review as part of the subject DA. This cannot be given weight in the determination of the subject DA.
- The proposed tree removal, along with unknown impacts to other vegetation on the site, public land, and neighbouring property, cannot be considered low impact as required by the zone objectives.
- One cannot draw similarities between the proposed subdivision and the existing allotments on Lakeview Parade given the historic nature of these subdivisions that were approved under different planning provisions.
- The dimensions of the allotments fail to satisfy the relevant planning controls, and the proposed allotments are not consistent with the size and dimensions of existing allotments in the street. Therefore, the proposal is neither compatible with the existing subdivision character of the area, nor the desired future character established by the controls.

In this circumstance the proposal fails to meet the objectives.

3. Dimensions

The submission indicates the width of the allotments are consistent with majority of surrounding sites, which has been reasonably developed and contribute to the desired character of the locality.

This statement within the submission is not quantified. There is no comparative analysis between the dimensions of existing allotments along Lakeview Parade and that being proposed.

If such a comparative analysis had been undertaken, then the Applicant would have observed that surrounding multi-lot subdivisions on Lakeview Parade contain larger allotments.

Even so, the existing subdivision arrangements for Lakeview Parade were not undertaken under the current planning controls.

As indicated above, the dimensions of the allotments fail to satisfy the relevant planning controls, and the proposed allotments are not consistent with the size and dimensions of existing allotments in the street. Therefore, the proposal is neither compatible with the existing subdivision character of the area, nor the desired future character established by the controls.

The applicant was requested to provide concept designs to demonstrate each lot can reasonably be developed. The information submitted does not adequately demonstrate this. The dimensions of the allotment combined with the multi-lot subdivision arrangement create constrained allotments with limitations on future building locations, impacts on vegetation and potential view sharing impacts.

4. Setbacks

The submission disagrees with the Assessment Report's application of control D14.7 Front building line to Lots 2, 3 and 4. The submission argues the objectives turn to how a development relates to the street and given these lots do not have a street frontage, Lot's 2, 3 4 and 5 should not be subject to the front building line control.



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D14.7 does not specify that the front building line is measured to the street, nor does the building line definition within the PLEP. Rather, it references the front building line in relation to the property boundary.

There are nine (9) outcomes for the control as follows:

- *Achieve the desired future character of the Locality.*
- *Equitable preservation of views and vistas to and/or from public/private places. (S)*
- *The amenity of residential development adjoining a main road is maintained. (S)*
- *Vegetation is retained and enhanced to visually reduce the built form. (En)*
- *Vehicle manoeuvring in a forward direction is facilitated. (S)*
- *To preserve and enhance the rural and bushland character of the escarpment and the locality. (En, S)*
- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*
- *To encourage attractive street frontages and improve pedestrian amenity.*
- *To ensure new development responds to, reinforces, and sensitively relates to the spatial characteristics of the existing urban environment.*

Not all the outcomes are relevant to every development site. For example, the third objective relates only to properties presenting to a main road.

Only three (3) objectives specifically relate to visibility from the street. One (1) relates to views and vistas to and/or from public/private places and equally applies to any allotment.

Lot 1 is the only development presenting to Lakeview Parade. There is no specific assessment required given it is an existing dwelling and the setback is not altered.

The existing urban environment includes multi-lot subdivision not undertaken under the current planning instruments and not subject to the same controls. The dwellings are historic and predate current planning controls. The objectives relate to the desired future character.

The existing urban environment is established and includes:

- 16, 16A, 18A and 20 Lakeview Parade were created by subdivision in 1984. The allotments vary in size between 700.7m² - 838.4m². The front allotments presenting to Lakeview Parade are approximately 150m² larger in area. The rear allotments are approximately 200m² larger.
- 20 was later subdivided again to create 20 and 20A for a dual occupancy and subdivision in 1994. The consent was issued in 1992.
- A three-lot subdivision was undertaken in 1951 to create 24, 26 and 28 Lakeview Parade
- 26 Lakeview Parade was again subdivided into three allotments in 1988.

The submission argues the application of D14.7 to allotments not fronting a street is not consistent with Council's historic application of this control and claims the setback to an internal boundary of a battle-axe block is one that is to be assessed on merit only.

This is clearly inconsistent with the wording of the control, when applying the relevant definition for 'front building line' and considering the objectives of the control.



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The outcomes of the controls have not been achieved. The extent of flexibility sought to controls is not considered reasonable.

The reliance upon the PDCP variation provisions is not reasonable for the purposes of a concept design in association with a subdivision. To approve the subdivision, knowing it must rely upon variation provisions (prior to outcomes being achieved) circumvents the necessary planning process and orderly development of land.

The submission disagrees with the issues raised in the Assessment Report regarding the turning bays in the front setback.

I say, it is possible to have a subdivision arrangement whereby one can achieve the required vehicle manoeuvring without having to include turning bays within the front setback of the dwelling. It is the design choice and layout of this particular subdivision which necessitates a reliance upon the turning bays within the front dwelling setbacks. The PDCP controls require landscaping (including two canopy trees) within the front setback which suggests, a turning bay in this area of an allotment is not the desired outcome.

5. Landscape quality and area calculations

The submission disagrees with the Assessment Report that a suitable landscape outcome is not achieved from the proposed development, and noting this position differs from the opinion of the Landscape Officer.

It is the role of the assessment officer to consider a proposal in its entirety, considering the responses of the referral officers.

The landscape area calculations within the Assessment Report were based on the Applicant's plans submitted for the DA, as amended.

It is not uncommon for an applicant and the assessing officer to have a different calculation.

Irrespective, the submission indicates variation to the landscape control is historically always given. Ms Englund bases this comment on her having worked under the provisions of the PDCP for 12 years and being unaware of any instance where the application of this variation has been denied by Council.

I say consistency in the historic interpretation or application of controls is important, but it is more important not to perpetuate the mistaken interpretation of a control once this is identified. The variation of a control is not automatic. To enable variation, it must first be demonstrated the outcomes of the control can be achieved.

The submission disagrees with a more onerous landscape area control being required for Lot 2, given this allotment is split across two zones. The front of Lot 2 is located within Area 3 which is subject to a 50% landscape area requirement, and the rear a 60% requirement because it is located within Area 1.

More of the allotment falls within Area 1, and so it would follow that it be more appropriate to apply the Area 1 controls. Furthermore, given the majority of unbuilt upon area is within the Area 1 portion, the Area 1 landscaped area controls should apply to the site. Lastly, given the presence of existing



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vegetation on site, it would seem more reasonable to have a cautionary approach and apply a greater landscape area requirement to help ensure its retention in a landscaped setting.

6. Amenity

The submission indicates the application is supported by conceptual dwelling design only and alternative design solutions exist.

The development is a multi-lot subdivision. The purpose of the request for information was providing the applicant an opportunity to demonstrate that the proposed allotments can be reasonably developed with respect to the planning controls and impacts on neighbouring property. For the reasons outlined in this response and in the Assessment Report, this has not demonstrated by the Applicant.

The site neighbours nine (9) other allotments. The proposal creates an additional three (3) allotments over that already existing on site. To the east and southeast are highly valued water views. All proposed allotments are orientated south to north. The proposed allotments slope north to south. Design consideration is necessary to ensure there is no adverse impact upon the surrounding properties.

The Assessment Report maintains the site is capable of subdivision. However, the subject application does not demonstrate an acceptable development outcome is achievable with the number of allotments proposed in their configuration.

The concerns raised in the assessment with the proposal can be addressed by either reducing the number of allotments to facilitate less constrained allotments, or to enable a complete assessment of all likely impacts arising from the development, a proposal that integrates both the subdivision and build form aspects of the development.

RECOMMENDATION:

That Northern Beaches Council as the consent authority refuse DA2022/1944 for the reasons outlined in the Assessment Report.

A handwritten signature in black ink, appearing to read 'Kavwenje'.

Kimberley Kavwenje
CPS Planning Consultant