



northern  
beaches  
council

## MEMORANDUM

**DATE:** 5 September 2023

**TO:** Northern Beaches Local Planning Panel (NBLPP)

**CC:** Peter Robinson, Executive Manager Development Assessment

**FROM:** Brittany Harrison

**SUBJECT:** Item No. 5.1 – DA2023/0296 – No. 261 Alfred Street, Cromer

**TRIM REFERENCE:** 2023/568126

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The purpose of this memo is to advise the Panel of a late submission that has been received from the applicant (Danielle Deegan) which raises the following concern:

### **Recommended Condition No. 34 - Building Footprint - Section 88B Instrument**

Condition No. 34 requires that any future development on either proposed lot is to not exceed the building footprints depicted on the indicative building plans prepared by JJ Drafting dated 6 June 2023. Council is to be the sole authority empowered to vary, release, or modify the restricted building footprint.

The applicant raises concern that this condition does not allow for flexibility in design, is overly restrictive and unreasonable as any future proposals on the allotments will require approval and compliance with the applicable planning controls at the time of re-development.

The applicant offers new wording to replace Condition No. 34 to read as follows:

*“Prior to the issue of the Subdivision Certificate, the Principal Certifying is to be provided with evidence of the creation of a restriction on the use of land under Section 88B of the Conveyancing Act 1919, burdening the area of land shown on the approved Survey Plan (Issue # 3) prepared by CMS Surveyors Pty Ltd, dated 19 May 2023. The terms of the restriction are to state that any future development is to achieve full compliance with the relevant development controls including building height, setbacks, building envelope and landscaped area.”*

The above requested amendment to Condition No. 34 does not provide the assurance that future development will result in acceptable amenity impacts or result in a dwelling of a size and scale that is appropriate for under-sized allotments. It is also not possible to determine what the applicable planning controls may be, once the lots undertake re-development.

During the assessment of this application, further information was provided i.e., indicative building plans, which demonstrated compliance with the current applicable planning controls in line with the Warringah Development Control Plan 2011 (WDCP 2011), and acceptable levels of amenity. This information was considered sufficient and was used as a planning ground within the submitted Clause 4.6 for the proposed variations of the subdivision.

It is therefore, considered that the recommended Condition No. 34 in the assessment report is to remain and is not to be altered. The condition in its current form is acceptable, particularly for a subdivision that results in under-sized allotments. The lots shall be restricted to the building footprints of the submitted indicative plans prepared by JJ Drafting dated 6 June 2023.

### **Recommendation**

That the Northern Beaches Local Planning Panel note the submission.

No changes required to the recommendation or conditions contained in the assessment report.