

Memo

Development Assessment

To: Northern Beaches Local Planning Panel (NBLPP)

Cc: Adam Richardson, Acting Executive Manager, Development Assessment

From: Daniel Milliken, Manager, Development Assessments

Date: 31 August 2026

Subject: Item 4.4 - DA2026/0390 - 16 Rabaul Road, North Curl Curl

Record Number: 2026/505906

The purpose of this memo is to address matters raised in the recent submission by Greg Boston (Boston Blyth Flemming Pty Ltd), in response to Council's NBLPP Assessment Report. The submission from Bostyn Blyth Flemming is supported by a legal opinion provided by McCartney Young Lawyers.

Matters raised in the submission

Council acknowledges that some technical matters identified in the Assessment Report are either capable of being resolved by condition of consent or are no longer considered sufficient, in isolation, to warrant refusal. However, the fundamental planning concerns and the recommendation for refusal remains unchanged.

The central issue is that the proposed subdivision seeks to retain the existing dwelling whilst creating an undersized allotment that relies upon an irregular boundary configuration and steep access arrangement. Whilst individual design matters may be capable of resolution, the cumulative outcome remains an undesirable planning result that is inconsistent with the objectives of the minimum lot size standard and does not demonstrate sufficient environmental planning grounds to justify the Clause 4.6 variation.

1. 398.3m² Lot 1 / 11.49% Clause 4.1 variation

It is recommended the Panel **retains** this reason for refusal.

The Applicant places significant reliance on the approval of DA2026/0175 at 18 Kentwell Road, Allambie Heights. However, the circumstances of that application are materially different from those applying to the subject site. The Kentwell Road site benefited from a larger site area, a regular lot configuration, relatively unconstrained topography and an indicative dwelling envelope capable of readily demonstrating compliance with applicable planning controls including all setbacks.

A comprehensive analysis of Kentwell Road was provided in its Assessment Report which demonstrated that the proposed development is compatible with the established character of the locality and the prevailing pattern, size and configuration of surrounding allotments.

In contrast, the proposed subdivision is affected by several cumulative constraints, including steep topography, an irregular boundary configuration, retention of the existing dwelling, a turntable arrangement and uncertainty regarding the long-term development potential of the proposed lot. These constraints arise directly from the proposed subdivision layout, lot sizes and retention of the existing dwelling, which result in an undesirable planning outcome due to loss of privacy, landscaping non-compliance, parking and accessibility constraints, and future built form constraints including substantial excavation.

The issue is not simply the numerical variation itself, but the planning consequences arising from the variation. Council remains unsatisfied that sufficient environmental planning grounds have been demonstrated to justify the departure from the minimum lot size standard.

2. Alleged B7 front-setback non-compliance

It is recommended the Panel **retains** this reason for refusal. However, should approval be granted, a condition of consent would be recommended for privacy screening to the upper-level southern facing windows.

The Applicant submits that the B7 Front Boundary Setback control should not apply because the proposed boundary is an internal subdivision boundary rather than a road frontage. Whilst Council acknowledges that the proposed boundary does not adjoin a public street, the underlying planning objectives of the control remain relevant when assessing the resulting subdivision outcome. In particular, the proposal creates an unusually constrained relationship between the retained dwelling on Lot 2 and the future dwelling on Lot 1.

An objective of the *B7 Front Boundary Setback* control of the WDCP is to 'create a sense of openness'. The proposed irregular front boundary setback to the existing dwelling is a minimum of 0.9m from the proposed internal lot boundary. This outcome does not achieve the level of openness generally anticipated by the control and contributes to a constrained development envelope on Lot 1.

Further, *Section D8 Privacy* of WDCP includes objectives and requirements to protect the privacy of neighbouring properties. The upper level of the existing dwelling contains four southern-facing windows that will directly overlook the private open space of proposed Lot 1. This relationship would further constrain the siting and design of any future dwelling and may require additional privacy measures to achieve an acceptable residential amenity outcome.

Whilst privacy impacts could potentially be mitigated through the installation of privacy screening, Council remains concerned that the proposed boundary alignment and resulting separation distances reflect a subdivision outcome that is driven by the retention of the existing dwelling rather than the creation of appropriately configured residential allotments.

3. Alleged 13m lot-width non-compliance

It is recommended the Panel **retains** this reason for refusal.

The proposed minimum allotment widths are the result of the proposed irregular/internal boundary alignment. It is noted the main areas of the lot widths comply with the minimum lot width requirement. However, the proposed irregular boundary alignment results in

underutilised space in Lot 1 to the east of the proposed turntable. This space is steep and will likely be unusable space that is small in area and steep in topography.

This is considerably different to the Kentwell Road site which is larger and regular in shape on flat land with no significant site constraints and provides a generous and compliant building footprint.

It is the resulting subdivision outcome rather than the lot width measurement itself that remains of concern. Unlike Kentwell Road, where a regular allotment configuration resulted in a generous and unconstrained building footprint, the subject proposal produces a less efficient development outcome.

4. Alleged 4m driveway width requirement

It is recommended the Panel **deletes** this reason for refusal.

Council's Development Engineer has reviewed the proposed driveway width and has provided their support for the proposal. However, it is noted that the access arrangement is less than ideal due to the constrained and steep nature of the site. Whilst acceptable from an engineering perspective, the driveway arrangement does not provide the same level of convenience, visibility and pedestrian amenity that would ordinarily be expected on a less constrained site. These matters do not independently warrant refusal but contribute to Council's broader concern that the proposed subdivision is attempting to develop a very constrained site.

5. Pedestrian access

It is recommended the Panel **retains** this reason for refusal.

Council's Development Engineer has reviewed the proposed pedestrian accessibility within the site and has provided their support for the proposal. However, the site's considerably steep topography provides less than ideal sight lines for vehicular movement in and out of the site. The reliance on the turntable is concerning as it may become underutilised, and vehicles would then be required to reverse rather than enter and exit in a forward direction. There is no set pedestrian access pathway within the site, and reliance on a less than 4m wide driveway raises safety concerns.

6. Alleged non-compliant driveway transitions

It is recommended the Panel **deletes** this reason for refusal.

Council's Development Engineer has reviewed the proposed driveway transitions and has provided their support for the proposal. However, as discussed above, Council maintains concerns regarding the overall access arrangement due to the steep topography of the site and the constrained development outcome that results from the proposed subdivision pattern. These concerns relate to the broader planning merits of the subdivision rather than technical engineering compliance.

7. No passing bay

It is recommended the Panel **deletes** this reason for refusal.

Council's Development Engineer has reviewed the proposal and has confirmed a passing bay is not required in this circumstance. The proposal generates access requirements associated with only two residential allotments and traffic volumes are

expected to remain low. On balance, Council accepts the engineering advice that an alternate access arrangement can function safely without provision of a formal passing bay.

8. Turntable

It is recommended the Panel **retains** this reason for refusal.

The proposed turntable is a direct consequence of the Applicant seeking to retain the existing dwelling whilst creating an undersized additional allotment. Whilst the turntable may provide a functional access solution in the short term, Council remains concerned about the long-term planning outcome that would result should Lot 2 be redeveloped in the future.

In that circumstance, the turntable would likely become redundant, leaving an irregular and underutilised portion of land that serves little planning purpose. The illustrated arrangement in Figure 1 demonstrates how a substantial area of the lot may become isolated from the future development pattern and contribute to an inefficient use of residential land.

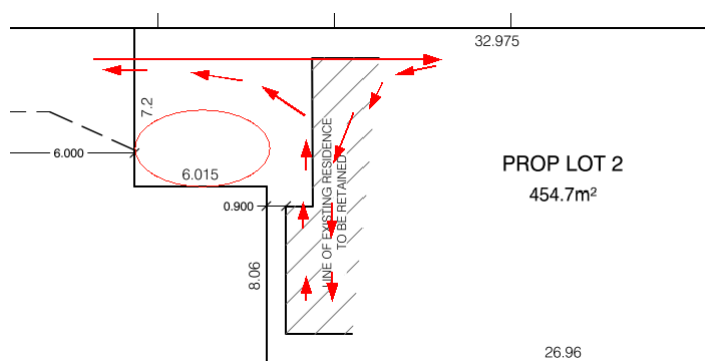


Figure 1. Indicative future access pathway: arrows indicate driving in, reversing, then leaving in a forward direction. Underutilised space circled in red.

The concern is not the visual appearance of the turntable itself, but rather what the turntable reveals about the subdivision design. Specifically, it demonstrates that the lot configuration has been shaped around retaining the existing dwelling rather than creating an orderly and enduring subdivision pattern.

9. Irregular internal lot boundary

It is recommended the Panel **retains** this reason for refusal.

For the reasons set out above in Item 8, an irregular internal lot boundary results in an undesirable long term planning outcome and is inconsistent with the prevailing lot configurations within the surrounding locality, as demonstrated in the assessment report.

Although there are some examples of lots that have irregular internal boundary alignments, they would unlikely result in areas that are underutilised as described above, should future redevelopment occur.

The irregular boundary is intrinsically linked to the turntable arrangement and the desire to maximise lot yield whilst retaining the existing dwelling. As a consequence, the

resulting allotments depart from the prevailing subdivision pattern of the locality and create a less efficient long-term land use outcome.

10. Alleged Landscaped Open Space non-compliance of Lot 2

It is recommended the Panel **retains** this reason for refusal. However, should approval be granted, a condition of consent would be recommended to remove the concrete pavers to achieve 40% landscaped open space in Lot 2.

Council acknowledges that Lot 2 is capable of achieving the numerical landscaped open space requirement of 40% through the removal of a portion of the existing paved area, as identified in the Applicant's submission. Notwithstanding this, Council considers the deficiency in landscaped open space to be symptomatic of the broader constraints affecting the proposed subdivision. The need to rely on the removal of an existing paved area to achieve compliance demonstrates the limited flexibility available within the site and reinforces Council's concern that the proposed subdivision represents an overdevelopment of the land.

Accordingly, whilst the numerical landscaped open space requirement can be achieved through a condition of consent, this does not overcome Council's broader concerns regarding the suitability of the proposed lot configuration, the cumulative impacts arising from the undersized allotment, and the overall subdivision outcome.

Should the Panel grant development consent, Council recommends a condition requiring the removal of the existing concrete pavers and landscaping of the area to ensure compliance with the landscaped open space requirements.

11. Local subdivision pattern and residential character

It is recommended the Panel **retains** this reason for refusal.

Whilst the Applicant identifies examples of undersized and irregularly configured allotments within the locality, Council maintains that the proposal is not representative of the prevailing subdivision pattern or character of development within the surrounding area.

The proposal is distinguished by the combination of an undersized lot, irregular boundary alignment, steep topography and turntable reliant subdivision design. These elements collectively produce an outcome that differs from the established subdivision pattern and does not reflect the intended operation of the minimum lot size standard.

Accordingly, the proposal fails to adequately satisfy the objective of Clause 4.1 relating to consistency with the pattern, size and configuration of allotments within the locality.

12. Future dwelling capability on Lot 1

It is recommended the Panel **retains** this reason for refusal.

The Applicant relies upon indicative concept plans to demonstrate that a dwelling may be capable of being accommodated on Lot 1. Council acknowledges that a dwelling could potentially be constructed on the lot. However, this does not resolve the broader question of whether the lot has been appropriately designed to facilitate a high-quality residential outcome.

The proposed lot remains constrained by its irregular shape, steep topography, proximity to the retained dwelling and limited development flexibility. These constraints increase

the likelihood that a future dwelling would require design compromises, substantial site works or reliance upon future departures from development controls.

For example, the concept plans do not demonstrate a compliant driveway to a garage set back at least 6.5m from the front boundary. Given the steepness of the site, it is likely that any future garage for Lot 1 would need to be closer to the front boundary or significantly excavated into the site. Neither option is desirable.

Unlike the Kentwell Road subdivision, the proposed lot does not provide a generous and readily developable building footprint. Council is therefore not satisfied that the subdivision creates a lot capable of comfortably accommodating a future dwelling whilst achieving a high level of residential amenity and compliance with planning controls.

13. R2 Low Density Residential zone objectives

It is recommended the Panel **retains** this reason for refusal.

Whilst the proposal would maintain residential land use and facilitate an additional dwelling within the R2 Low Density Residential zone, Council remains concerned that the proposed subdivision does not achieve an orderly and appropriate low-density residential outcome.

The proposal relies upon an undersized allotment, an irregular boundary configuration and a subdivision layout driven by the retention of the existing dwelling. These factors collectively result in constraints on future development, an inefficient lot arrangement and a subdivision outcome that is inconsistent with the intended character of low-density residential development within the locality.

Although several technical matters raised during the assessment process may be capable of resolution through conditions of consent, Council remains unsatisfied that the overall development achieves the objectives of the R2 Low Density Residential zone, particularly those relating to providing for the housing needs of the community within a low-density residential environment and ensuring development is compatible with the existing and desired future character of the locality

Accordingly, Council maintains that the proposed subdivision is inconsistent with the objectives of the R2 Low Density Residential zone and this reason for refusal should be retained.

14. Public interest / precedent

It is recommended the Panel **retains** this reason for refusal.

The Applicant contends that approval would not create a planning precedent because any future variation request would need to be assessed on its own merits. Whilst this proposition is accepted, the public interest test requires consideration of whether the current proposal represents orderly and appropriate development of land.

The resulting undersized lot, irregular boundary arrangement and reliance upon a turntable design collectively represent a subdivision and future planning outcome that is not considered to be in the public interest.

For these reasons, Council remains of the view that the proposal should not be supported and that the Clause 4.6 variation has not been adequately justified.

CONCLUSION

Council has carefully considered the matters raised in the Applicant's submission and, as a result, has reviewed each of the reasons for refusal contained within the Assessment Report. Council accepts that some technical matters are either capable of being resolved through conditions of consent or should no longer be relied upon as standalone reasons for refusal.

Notwithstanding this, the fundamental planning concerns identified throughout the assessment process remain unchanged. The proposal seeks to facilitate the creation of an undersized allotment through a subdivision design that is dependent upon the retention of the existing dwelling, an irregular internal boundary alignment and a turntable access arrangement. Whilst individual elements of the proposal may be capable of resolution, the cumulative outcome remains an undesirable planning outcome.

Council remains concerned that the proposed subdivision does not reflect the prevailing pattern, size and configuration of allotments within the locality and results in ongoing constraints regarding future development opportunities, residential amenity, site utilisation and long-term subdivision outcomes. These matters arise directly from the proposed lot configuration and are not resolved by addressing the individual technical issues raised in the Applicant's submission.

Accordingly, Council remains unsatisfied that sufficient environmental planning grounds have been demonstrated to justify the proposed 11.49% variation to the minimum lot size development standard or that the resulting subdivision represents an orderly and appropriate planning outcome. For these reasons, the recommendation for refusal remains unchanged.

RECOMMENDATION

That the Planning Panel refuse DA2026/0390 as recommended, subject to the following amended reason:

7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1 Subdivision of the Warringah Development Control Plan.

Particulars:

a) The proposed lots are a maximum of 8 metres in width, where a minimum lot width of 13 metres is required by Clause C1.

~~*b) The proposed driveway has a 25% gradient that does not allow for transitions, where transitions at a minimum length of 1.5m and at a grade no steeper than 1:10 is required by Clause C1.*~~

~~*c) The proposed driveway is 31.03m in length and no passing bay is proposed, where driveways 30m or more in length require a passing bay under Clause C1.*~~

~~*d) The proposed driveway has a width of 3.8m, where a minimum width of 4m is required by Clause C1.*~~

e) The proposed undersized lot is inconsistent with the existing and desired built and landscape character of the low density locality, and would create an irregular

boundary alignment, and potential for unacceptable future development of the land.