
Sent: 23/01/2020 8:45:00 AM
Subject: FW: Development Application No: DA2019/1332 for Subdivision of one lot into two at 12A John Street Avalon
Attachments: NECC (Bushland and Biodiversity) - Attachment 1.PDF; Landscape Referral Response - Attachment 2.PDF; NECC (Coast and Catchments) Officer - Attachment 3.PDF; NECC (Riparian Lands and Creeks) - Attachment 4.PDF; Development Engineering Referral Response - Attachment 5.PDF; Request for Withdrawal of Development Application - THW Architects.DOCX;

Dear Tim and Vaughan,

Assessment of the subdivision application is now completed and planning matters of Council concern are highlighted in the letter attached (Request for Withdrawal of Development Application).

My apologies are sent to Vaughan as I previously sent it to Vaughan in error. Further apologies for using Time instead of Tim.

This letter has been amended to reflect the new timeframe to either withdraw the application with partial fee refund or let the application be determined.

Opportunities for amended/revised plans are not possible with this application, particularly given the highlighted planning matters.

Also, I shall respond back to you in terms of providing a response given you are on holidays.

Please feel free to call/email to discuss prior to this time.

Kind Regards

Kevin Short
Planner

Development Assessment
t 02 9942 2143 m 0409 363 865
kevin.short@northernbeaches.nsw.gov.au
northernbeaches.nsw.gov.au



From: Kevin Short
Sent: Thursday, 23 January 2020 8:26 AM
To: tim@thw.net.au
Cc: Vaughan Milligan
Subject: FW: Development Application No: DA2019/1332 for Subdivision of one lot into two at 12A John Street Avalon

Dear Time and Vaughan,

Assessment of the subdivision application is now completed and planning matters of Council concern are highlighted in the letter attached (Request for Withdrawal of Development Application).

My apologies are sent to Vaughan as I previously sent it to Vaughan in error.

This letter has been amended to reflect the new timeframe to either withdraw the application with partial fee refund or let the application be determined.

Opportunities for amended/revised plans are not possible with this application, particularly given the highlighted planning matters.

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Kind Regards

Kevin Short
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From: Kevin Short
Sent: Monday, 13 January 2020 3:49 PM
To: VMDC <vmdc@bigpond.net.au>
Subject: Development Application No: DA2019/1332 for Subdivision of one lot into two at 12A John Street Avalon

Dear Vaughan,

Assessment of your subdivision application is now completed. Planning matters of Council's concern have been forwarded to you.

As per the letter sent, it is now your opportunity to either withdraw the application with partial fee refund or let the application be determined.

Please feel free to call/email to discuss prior to this time.

Kind Regards

Kevin Short
Planner

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Natural Environment Referral Response - Biodiversity

Application Number:	DA2019/1332
Responsible Officer	Kevin Short
Land to be developed (Address):	Lot 2 DP 1237357 , 12 A John Street AVALON BEACH NSW 2107

Reasons for referral

This application seeks consent development on land, or within 40m of land, containing:

- All Development Applications on
- Actual or potential threatened species, populations, ecological communities, or their habitats;
- Wildlife corridors;
- Vegetation query stipulating that a Flora and Fauna Assessment is required;
- Vegetation query - X type located in both A & C Wards;

And as such, Council's Natural Environment Unit officers are required to consider the likely potential environmental impacts.

Officer comments

Council's Natural Environment - Biodiversity section cannot support the application due to non-compliances with relevant Pittwater LEP / DCP controls and the provisions of the NSW *Biodiversity Conservation Act 2016* (BC Act 2016).

This application was assessed against Pittwater LEP Clause 7.6 Biodiversity and Pittwater DCP B4.19 Estuarine Habitat as well as the NSW *BC Act 2016* and Coastal Management SEPP 2018 Coastal Wetlands and Proximity Area. The property is also identified as a wildlife corridor.

The proposal is for the subdivision of the land into 2 lots which includes the construction of a driveway and an additional two Development Applications (DA2019/1333 and DA2019/1334) have been submitted for the construction a new dwelling, garage and secondary dwelling on each of the proposed lots. Proposed Lot 12A with a 4-bedroom dwelling and 2-bedroom secondary dwelling and proposed Lot 12B with a 5-bedroom dwelling and 2-bedroom secondary dwelling.

The land is currently vacant and contains large native canopy trees, some planted exotic / non-local native trees and mown lawn / exotic garden. The property directly adjoins Careel Creek to the east which contains sensitive estaurine habitat and protected mangroves. The native canopy trees clustered within the north-eastern portion of the site are mapped as PCT 1234 Swamp Oak Swamp Forest Fringing Estuaries which is a component of Swamp Oak Floodplain Forest an EEC listed within the NSW *BC Act 2016* and Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act 1999).

The submitted Arborist Report '*Arboricultural Impact Appraisal and Method Statement*' (Naturally Trees, 20/09/2019) assesses 54 trees, 23 of which are prescribed under PDCP. Of the 23 prescribed trees 5 are located on adjoining land and 18 within the property. The proposed subdivision and resulting residential development will remove 12 of the 18 prescribed trees, 11 of these being high category trees.

The Arborist did not assess impacts to trees resulting from the proposed Stormwater Management Plan, including trenching and dispersal trench / bio swale which is proposed close to other high quality trees to be retained.

Local controls

Relevant provisions under local controls include;

- The development is designed, sited and will be managed to avoid any significant adverse environmental impact. If impact cannot be reasonably avoided by adopting feasible alternatives, the development is to be designed, sited and managed to minimise that impact.
- Development shall provide adequate buffering to estuarine habitat.
- Existing wildlife corridors are to be maintained and functional habitat links provided wherever possible.

It is considered that the proposal has not been designed to avoid or minimise impacts to biodiversity given that 12 of the 18 prescribed trees will be removed, and additional impacts are expected from the proposed stormwater management plan impacts which have not been assessed.

The submitted Landscape Plan is not consistent with the Flora and Fauna Report recommendations for revegetation to be conducted using species from the Swamp Oak Floodplain Forest species and references a "living retaining wall". The Landscape Plan proposes lawn and landscaped plantings up to the creek.

There is no legal mechanism for Council to condition offset plantings on land that is not within the property.

The proposal is inconsistent with local provisions.

NSW Biodiversity Conservation Act 2016

The vegetation within the north-eastern portion of the site is mapped as "Biodiversity Value" within the Biodiversity Values Map published by DPIE within the Biodiversity Offsets Scheme (BOS). Clause 7.1 (3) of the Biodiversity Conservation Regulation 2017 requires consideration of the likely vegetation clearing resulting from the subdivision, which are presented in the two dwelling DAs. The proposal is removing native trees within the mapped extent which triggers automatic entry into the BOS. As a result impacts to biodiversity must be assessed within a Biodiversity Development Assessment Report (BDAR) prepared by an Accredited Assessor. Alternatively, the proposal could be amended to avoid removing native vegetation within the mapped "Biodiversity Value" extent, which will demonstrate some avoidance of biodiversity impacts.

The Arborist Report identified *Syzygium paniculatum* (T22) which is a threatened species listed in Schedule 1 of the NSW *Biodiversity Conservation Act 2016*. This species was not identified or assessed with a 5-part test within the Flora and Fauna Report (Ecological Consultants Australia, October 2019).

The proposal is inconsistent with the NSW *BC Act 2016*.

Coastal Management SEPP 2018

The Flora and Fauna Report (Ecological Consultants Australia, October 2019) addresses the objectives of the relevant clauses within this SEPP.

There are inconsistencies between plans and impacts not yet assessed described above. As such,

Council is not currently *satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland.*

Recommendation

Council's Natural Environment - Biodiversity section cannot support the application due to non-compliances with relevant Pittwater LEP / DCP controls and the provisions of the NSW BC Act 2016 and Coastal Management SEPP 2018. The applicant is encouraged to consider a design which avoids and minimises impacts to the biodiversity values on the site, i.e. retention of prescribed high quality trees and a wider set-back from Careel Creek.

The proposal is therefore unsupported.

Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.

Recommended Natural Environment Conditions:

Nil.

Landscape Referral Response

Application Number:	DA2019/1332
Date:	19/12/2019
Responsible Officer:	Kevin Short
Land to be developed (Address):	Lot 2 DP 1237357 , 12 A John Street AVALON BEACH NSW 2107

Reasons for referral

This application seeks consent for the following:

- Construction / development works within 5 metres of a tree or
- New residential works with three or more dwellings. (RFB's, townhouses, seniors living, guesthouses, etc). or
- Mixed use developments containing three or more residential dwellings.
- New Dwellings or

Officer comments

The Arborist's Report submitted with the application is noted.

The Report indicates that 12 Category A trees (Trees worthy of being a constraint) are to be removed to accommodate the subdivision and proposed building footprints indicated on the sub-division plan.

Only 2 Category A trees are indicated to be retained. These 2 trees at the rear of the site are impacted by the proposed stormwater dispersal trench (and associated pipework) indicated on the stormwater plans submitted.

In consideration of the above and the relevant planning controls, the proposed sub-division is not supported with regard to landscape issues.

Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.

Recommended Landscape Conditions:

Nil.

Natural Environment Referral Response - Coastal

Application Number:	DA2019/1332
Responsible Officer	Kevin Short
Land to be developed (Address):	Lot 2 DP 1237357 , 12 A John Street AVALON BEACH NSW 2107

Reasons for referral

This application seeks consent for land located within the Coastal Zone.

And as such, Council's Natural Environment Unit officers are required to consider the likely impacts on drainage regimes.

Officer comments

Referral Body Recommendation

Recommended for refusal

Refusal comments

Refused due to lack of information.

As already mentioned during PLM, the property at 12A John Street, Avalon Beach has been identified as being affected by tidal inundation on Council's Estuarine Hazard Mapping. The Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.10 Estuarine Hazard - Subdivision controls will apply to any proposed development of the site.

In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), an **estuarine planning level (EPL) of RL 2.22m AHD** has been adopted by Council for the subject site.

The B3.10 Estuarine Hazard - Subdivision control stipulates as follows in regard to building platforms: 'The subdivision of land requires the area of land contained on the landward side of the Foreshore Building Line for each additional allotment created to be at or above the Estuarine Planning Level.'

No details have been provided how this control has been addressed in the submitted Statement of Environmental Effects.

Furthermore, the B3.10 Control elaborates, 'Innovative and alternative designs in wave action and tidal inundation protection measures may be permitted on a merit basis subject to demonstration through an Estuarine Risk Management Report that the protection measures can be achieved'.

The assessment for subdivision remains pending till receipt of the Estuarine Risk Management Report. The report should be prepared by a specialist coastal engineer who is a registered professional engineer and has an appropriate level of professional indemnity insurance.

Assessments of DA2019/1333 and DA2019/1334 shall also remain pending and require separate Estuarine Risk Management Reports.

Recommended Natural Environment Conditions:

Nil.

Natural Environment Referral Response - Riparian

Application Number:	DA2019/1332
To:	Kevin Short
Land to be developed (Address):	Lot 2 DP 1237357 , 12 A John Street AVALON BEACH NSW 2107

Reasons for referral

This application seeks consent for the following:

- All Development Applications on land, and located within 40 metres of land, containing a watercourse, or
- All Development Applications on land containing a wetland, or located within 100m of land containing a wetland,
- All Development Applications on land that is mapped as "DCP Map Waterways and Riparian Land".

And as such, Council's Natural Environment Unit officers are required to consider the likely impacts on drainage regimes.

Officer comments

Summary

This application is recommended for refusal because:

Dwellings must be setback from the highest top of bank of Careel Creek by 20 metres (including decks and large areas of steps and any significant paved areas). The survey plan should indicate the highest top of bank of Careel Creek to aid assessment.

This development has been assessed under:

Pittwater 21 DCP B5.13 Development on waterfront land

SEPP Coastal Management 2018 - Coastal Environment Area/Land in proximity to coastal wetlands

Riparian Zones

While dwellings are exempt from requiring a controlled activity permit for building in a riparian zone, this does not exempt them from being subject to the riparian guidelines set by the Natural Resources Access Regulator. Council specifies that development should incorporate appropriately size riparian corridors based on the NRAR Riparian Guidelines - in this case a 20 metre riparian corridor (taken from top of the highest bank - not the centreline) applies to Careel Creek, which at this reach is a second order creek.

In addition to providing habitat in the creekline corridor, the riparian zone provides room for the creek to meander and provides an interface between development and the waterway. This is particularly important to mitigate the issues of natural odours and poor drainage impacting this section of Careel Creek due to the mangrove community.

The subdivision indicates building footprints for the two proposed lots, 12A and 12B John Street. The survey plan does not provide the exact location of Careel Creek and the top of the highest bank,

however it is estimated that both building footprints encroach on the riparian area by several metres.

Coastal Wetland

The subdivision is located on land mapped as Coastal Wetland and land in proximity to Coastal Wetland under the SEPP Coastal Management 2018. Due to the presence of coastal wetlands on the subdivision, further weight is given to the requirement to avoid encroachment on the 20 metre riparian zone on both proposed lots.

In addition, the dwelling should not significantly impact on the hydrological integrity of the coastal wetland, and quantity of surface flows. This will be assessed under the individual DAs.

Referral Body Recommendation

Recommended for refusal

Recommended Natural Environment Conditions:

Nil.

Engineering Referral Response

Application Number:	DA2019/1332
To:	Kevin Short
Land to be developed (Address):	Lot 2 DP 1237357 , 12 A John Street AVALON BEACH NSW 2107

Reasons for referral

This application seeks consent for the following:

- New Dwellings or
- Applications that require OSD where additional impervious area exceeds 50m² or
- Alterations to existing or new driveways or
- Where proposals affect or are adjacent to Council drainage infrastructure incl. watercourses and drainage channels or
- Torrens, Stratum and Community Title Subdivisions or
- All new Commercial and Industrial and RFB Development with the exception of signage or
- Works/uses in flood affected areas

And as such, Council's development engineers are required to consider the likely impacts on drainage regimes.

Officer comments

The following comments are provided in relation to the DA:-

- The proposed subdivision plan been prepared by an Architect does not have lot dimensions and bearings. The proposed plan of subdivision is to be prepared by a registered surveyor providing, detailed dimensions for the proposed lots with bearings. This is in order that an appropriate plan of subdivision is issued for the subdivision certificate.
- **The subject site is located in flood risk hazard area. The development may require filling of the land and provision for flood storage. comments Council's Floodplain Engineers is requested.**
- The right of carriageway exceed 50 meters from John Street. A common turning area to facilitate vehicles to leave in a forward direction is required to provide for safe access arrangement for the proposed subdivision. A detail turning movement area designed in accordance with AS/NZS 2890.1-2004 Parking Facilities is to shown on a concept driveway plan. Any elevation required due to flood level restriction should be incorporated in the driveway plan.
- A concept inter-allotment drainage plan is required showing the proposed connection to the existing internal drainage system.

Owing to the lack of information submitted with the application the proposed subdivision cannot be supported.

The proposal is therefore unsupported.

Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.

Recommended Engineering Conditions:

Nil.



23 January 2020



THW Architects
c/o: Tim West
Suite 101 Level 1 60 Old Barrenjoey Road
AVALON BEACH NSW 2107

Dear Tim West,

Development Application No: DA2019/1332 for Subdivision of one lot into two at 12A John Street Avalon

Council has completed a preliminary assessment of your application which was received by Council on 26 November 2019 and has identified a number of areas of non-compliance and insufficient information that will not allow Council to support the application in its current form.

These matters are as follows:

Pittwater Local Environmental Plan 2014

cl. 4.1 Minimum subdivision lot size: Contrary to the Objectives of this development standard, the subdivision will cause unacceptable impacts on the natural environment (see further discussion below).

cl. 7.6 Biodiversity & P21DCP cl. B4.19 Estuarine Habitat: Council's Bushland and Biodiversity Officer does not support the application given it is assessed as being non-compliant with local planning controls, the NSW Biodiversity Conservation Act 2016 and Coastal Management SEPP 2018.

Please see Council NECC (Bushland and Biodiversity) Officer - Attachment 1 for more information.

Pittwater 21 Development Control Plan (P21DCP)

cl. B2.2 Subdivision - Low Density Residential Areas: The irregular shaped subdivision, including the non-complying widths of the lots (i.e. less than 16m) and associated indicative building footprints demonstrate that an unacceptable and unreasonable impact on the existing environment will occur.

cl. B6.3 Off-Street Vehicle Parking Requirements: Development Applications DA2019/1333 & DA2019/1334 for the construction of a dwelling house and detached garage and secondary dwelling on each resultant lot under this subdivision development application have been concurrently lodged. As such, it is assumed a secondary dwelling is an indicative part of this subdivision application. However, no single parking space has been provided for each secondary dwelling.

cl. C1.1 Landscaping: Council Landscape Officer does not support the submitted Arborist Report.



Please see Attachment 2 for further details.

cl. C4.1 Subdivision - Protection from Hazards: The subdivision is not designed to provide adequate building platforms that have a low risk due to hazards including flood and estuarine hazards.

cl. C4.7 Subdivision - Amenity and Design: The subdivision and associated indicative building platforms will not have an acceptable impact on the environment.

cl. B3.10 Estuarine Hazard: The subject site is affected by tidal inundation on Council's Estuarine Hazard Mapping. Council's Coast and Catchments Officer does not support the application given that an Estuarine Risk Management Report was not submitted with the application.

Please see Attachment 3 for further details.

cl. B5.13 Development on Waterfront Land & State Environmental Planning Policy - Coastal Management 2018: Council's Riparian Lands and Creeks Officer does not support the application as it does not comply with the requirements of these relevant planning controls.

Please see Attachment 4 for further details.

cl. C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities & cl. B5.11 Stormwater Discharge into Waterways and Coastal Areas: Council's Development Engineering Officer does not support the subdivision plans, the proposed right of carriageway and absence of an inter-allotment drainage plan.

Please see Attachment 5 for further details.

Advice for the Applicant

The extent of the issues outlined above, result in Council being unable to support the proposal in its current form.

You are therefore strongly encouraged to withdraw this application and resubmit a new application that addresses all of the issues listed above. Council will not accept any additional information or amendments to this current application.

Should you choose to withdraw this application within ten (10) days of the date of this letter, Council will refund 75% of the development application fee. If you have not contacted Council by 30 January 2020, Council will assume that you are not withdrawing this application. In this case, no fees can be refunded and the application will be assessed and determined in its current form.

Should you agree to withdraw and in order for Council to process the request, confirmation must be received in writing to council@northernbeaches.nsw.gov.au. To speed up the processing of your refund, please supply bank details using the table provided below, otherwise your refund will be forwarded by way of cheque.

Please note that bank details supplied should match the name listed on the top line of your tax invoice receipt for the application. If bank details supplied do not match this name, then the refund will be forwarded by way of cheque. Council cannot be held responsible if the bank account details provided by you are incorrect.



Bank	
Name on Receipt	
BSB	
Account Number	
Email Address	

If you have not contacted Council by 30 January 2020, Council will assume that you are not withdrawing this application. No fees will be refunded and we will assess this application in its current form.

Should you wish to discuss any issues raised in this letter, please contact Kevin Short on 9942 2143 between 9.30am to 3.30pm Monday to Friday.

Yours faithfully

Rodney Piggott
Manager, Development Assessment