

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0715
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Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot B DP 419338, 11 B Hill Street WARRIEWOOD NSW 2102
Proposed Development:	Demolition works and Torrens Title subdivision of one lot into two lots
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	John Wayne Bardwell Christopher Ross Bardwell
Applicant:	John Wayne Bardwell Christopher Ross Bardwell

Application Lodged:	04/06/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	14/06/2021 to 28/06/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 6.9%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 20,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the demolition of all existing structures on the site and the subdivision of the lot into two lots and associated stormwater drainage works.

The application includes concept plans and built form characteristics for future dwellings on each lot, but development consent for the construction of new dwellings is not included in the scope of this application.

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 the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater 21 Development Control Plan - A4.14 Warriewood Locality

Pittwater 21 Development Control Plan - B2.2 Subdivision - Low Density Residential Areas

Pittwater 21 Development Control Plan - B5.15 Stormwater

Pittwater 21 Development Control Plan - B6.2 Internal Driveways

Pittwater 21 Development Control Plan - C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities

Pittwater 21 Development Control Plan - C4.7 Subdivision - Amenity and Design

SITE DESCRIPTION

Property Description:	Lot B DP 419338 , 11 B Hill Street WARRIEWOOD NSW 2102
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Hill Street.</p> <p>The site is battle-axe in shape with a frontage of 4.595m along Hill Street and a maximum depth of 76.2m. The site has a surveyed area of 1,333m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates two-storey residential dwelling and a swimming pool.</p> <p>The site falls approx. 5m from the east towards the west.</p> <p>The site contains a mostly landscaped curtilage around the dwelling with a large Norfolk Pine tree adjacent to the western side boundary.</p>

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Pre-lodgement Meeting **PLM2020/0225** was held on 30/09/2020 for Subdivision of one lot into two. The outcome of the meeting was generally unsupportive of the proposal due to combined effect of the allotments not meeting the minimum allotment size in combination with failing to meet the minimum width and length dimensions result in a proposal that would represent an overdevelopment of the site.

Letter to the applicant

A letter was sent to the applicant on 19 August 2021 detailing the following issues:

- Insufficient lot size
 - Driveway access.
 - Landscaping.
 - Subdivision pattern.
- In-Allotment drainage easement.
- Missing information
 - Driveway width.
 - Turning template.
 - Structural engineering certification of the driveway.

Applicant response to Council's letter

The following information was received by Council for review in response to Council's letter of 19 August 2021 however, the submitted information was not formally accepted as it did not satisfy the matters raised by Council's Development Engineer. Therefore, the assessment (being the subject of this report) is based upon the originally submitted plans and documentation.

20 September 2021

An Engineering Statement was received responding the the following issues:

- Driveway access.
- Inter-allotment drainage easement.

5 October 2021

A Traffic Report was received responding to the following issues:

- Driveway width.
- Turning template.

Furthermore, an updated Engineering Statement was received which further addressed the following issue:

- Driveway access.

18 October 2021

An amended Subdivision Plan was received which included building footprints on each respective allotment.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning	None applicable.

Section 4.15 Matters for Consideration	Comments
agreement	
Section 4.15 (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 allow Council to request additional information. No additional information was requested in this case.</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 matter can be addressed via a condition of consent.</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 matter can be addressed via a condition of consent.</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 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 4.15 (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	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic</p>

Section 4.15 Matters for Consideration	Comments
	impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of PLEP 2014 and P21DCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 14/06/2021 to 28/06/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Vladimir Kornjaca	13 Hill Street WARRIEWOOD NSW 2102
Ms Sheralee Patricia Hogan	11 Hill Street WARRIEWOOD NSW 2102

The following issues were raised in the submissions and each have been addressed below:

- **Lot size and density**
- **Access**
- **Stormwater drainage**
- **Parking**
- **Existing tree**

The matters raised within the submissions are addressed as follows:

- **Lot size**

Concern is raised that due to non-compliance of one of the proposed lots with the minimum subdivision lot size and dimensions over-development of the site is possible. It is requested that the density of future development on the undersized lot be restricted to limit impacts to adjacent properties.

Comment:

Council does not support the proposed subdivision due to the reasons outlined in the report below and is recommended for refusal.

- **Access**

Comment is made that the existing driveway is the only access point for vehicles and pedestrians to the proposed lots.

Comment:

Council has significant concerns regarding the safe and functional access of vehicles and pedestrians to the proposed lots. The existing driveway and proposed subdivision does not provide a vehicle passing bay or separate pedestrian access. As such, the proposal is recommended for refusal.

- **Stormwater drainage**

Concern is raised regarding stormwater disposal and its impact on adjacent properties.

Comment:

The applicant has submitted a concept stormwater drainage plan that indicates stormwater will be conveyed towards the rear of the lot and disposed of via an easement across 16B Lakeview Parade.

- **Parking**

Concern is raised regarding the location of the parking area on proposed Lot 1 and its potential impact on the adjacent dwelling.

Comment:

The submitted subdivision plan identifies potential siting of future dwellings and parking spaces. This application does not seek approval for the indicated building footprints. If this application were approved, a future development application will need to be submitted for assessment of parking provision and siting.

- **Existing tree**

Concern is raised regarding the existing Norfolk Pine tree and hazards associated if it were to collapse. It is requested the tree be removed.

Comment:

The proposed subdivision indicates that the Norfolk Pine tree is in good condition and is to be retained as part of the development. As the tree is located on private land, consent from the property owner and

Council is required for its removal. These matters are handled outside of the development application process.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development proposal is for demolition of existing structures and the proposed torrens title subdivision of one lot into two lots.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 zone Environmental Living, and the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation. • C4.7 Subdivision - Amenity and Design. • D14 Warriewood Locality. <p>The site is located in the E4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees.</p> <p>The subdivision proposal includes indicative building footprints, garages and parking areas, and proposed driveway alignments and Lot 1 indicates encroachment into the tree protection zone of the existing Norfolk Island Pine. The proposed stormwater plans includes stormwater works also within the tree protection zone of the existing Norfolk Island Pine. Concern is raised that the proposed building alignment and stormwater works for Lot 1 impact upon the Norfolk Island Pine and a Arboricultural Impact Assessment is provided recommending tree protection measures and the requirements to install a stormwater line through under boring with a depth of at least 600 mm beneath the existing soil levels. However it is considered that an alternative design layout is available for any future dwelling and associated stormwater works, and this can be determined under any separate new dwelling application.</p> <p>The proposed driveway handle will require the removal of two existing identified as T2 Weeping Bottlebrush.</p> <p>Landcape Referral raise no objections to the subdivision proposal, with no works in the tree protection zone of the Norfolk Island Pine to be undertaken and to be the subject to a separate application for any new dwelling.</p>
NECC (Development Engineering)	<p>Updated comments (4/11/2021)</p> <p>The previous comments below (see previous comments dated 10/8/2021) have not been addressed:</p>

Internal Referral Body	Comments
	<p><i>2. The subdivision is required to provide for an inter-allotment drainage system to drain all lots to the nearest Council's pit and pipe drainage system. Details of the proposed drainage system (concept plan) shall be submitted with the DA.</i></p> <p><u>Comment</u> The easement letter of consent from the downstream owner has been provided however as the subject property and proposed easement /drainage line route is affected by an existing easement and right of way 1.67m wide (DP705890) then consent from all lots that are benefited by the existing easement is also required.</p> <p><i>3. A drainage easement over the downstream properties are to be created in favour of all the lots proposed. Proof of drainage easement rights must be submitted with the DA.</i></p> <p><u>Comment</u> See above comments.</p> <p><i>4. A minimum of 3.0 m wide paved access way is to be provided to service all lots.</i></p> <p><u>Comment</u> The minimum driveway wide has not been detailed , additionally a vehicle turning template for a B85 vehicle to to be overlain on the turn into proposed Lot no 2.</p> <p><i>5. A single driveway access arrangement is to service both lots.</i></p> <p><u>Comment</u> See above comment.</p> <p><i>6. Passing bay will be required. where the proposed access driveway is more than 30 metres in length. The passing bay must be 5.0m wide and 10 m long shall be provide.</i></p> <p><u>Comment</u> The passing bay has not been provided.</p> <p>The proposed traffic signal arrangement in lieu of the above required passing bay is not accepted because there is no area within the Hill Street footpath for a vehicle to wait under the red signal . This is prevented on the western side of the existing driveway by a power pole and on the eastern side by the adjoining owners driveway crossing. Vehicles are not permitted to wait on the road carriageway.</p> <p>The subdivision application is not supported.</p> <p>Previous Comments (10/8/2021)</p> <p>The proposed subdivision development application is not supported</p>

Internal Referral Body	Comments
	<p>with reference to Councils previous pre-Lodgement meeting notes below with comments:</p> <p><i>1. On Site Detention stormwater management in accordance with B 5.7 of Pittwater DCP will be required for the proposed development, unless the total increase in impervious area post development can be demonstrated to be less than 50m² (Based on a cumulative basis since February 1996). A concept stormwater management for the development shall be designed in accordance with B5.7 of Pittwater DCP.</i></p> <p><u>Comment</u> Calculations by Council based on building platforms indicate an increase in impervious area of 50m². OSD is not required now but will be reassessed at the proposed housing development application stage.</p> <p><i>2. The subdivision is required to provide for an inter-allotment drainage system to drain all lots to the nearest Council's pit and pipe drainage system. Details of the proposed drainage system (concept plan) shall be submitted with the DA.</i></p> <p><u>Comment</u> The easement letter of consent from the downstream owner has been provided however as the subject property and proposed easement /drainage line route is affected by an existing easement and right of way 1.67m wide (DP705890) then consent from all lots that are benefited by the existing easement is also required.</p> <p><i>3. A drainage easement over the downstream properties are to be created in favour of all the lots proposed. Proof of drainage easement rights must be submitted with the DA.</i></p> <p><u>Comment</u> See above comments.</p> <p><i>4. A minimum of 3.0 m wide paved access way is to be provided to service all lots.</i></p> <p><u>Comment</u> The minimum driveway wide has not been detailed , additionally a vehicle turning template for a B85 vehicle to to be overlain on the turn into proposed Lot no 2.</p> <p><i>5. A single driveway access arrangement is to service both lots.</i></p> <p><u>Comment</u> See above comment.</p> <p><i>6. Passing bay will be required. where the proposed access driveway is more than 30 metres in length. The passing bay must be 5.0m wide and 10 m long shall be provide.</i></p>

Internal Referral Body	Comments
	<p><u>Comment</u> The passing bay has not been provided.</p> <p><i>7. A concept driveway plans with elevation shall be submitted with the DA.</i></p> <p><i>8. All trees that are affected by the proposed driveway shall be identified and marked on the plan.</i></p> <p><u>Comment</u> Assessment made by council Landscape Officer.</p> <p><i>9. The existing driveway if proposed to be retained, a Structural Engineer with NPER registration shall certify that the driveway is capable to withstand heavy loads such as concrete trucks (8 tons) together with detail structural evaluation of the existing pavement. Details on the method with core sampling and photos utilised to determine the structural integrity of the existing driveway is to be submitted with the DA.</i></p> <p><u>Comment</u> This certification has not been provided.</p> <p><i>10. All public utility services are to be provided below ground to service all proposed lots.</i></p> <p><u>Comment</u> Noted.</p> <p><i>11. The subdivision is required to submit an inter-allotment drainage system to drain all lots to the nearest Council's pit and pipe drainage system. Details of the proposed drainage system (concept plan) shall be submitted with the DA.</i></p> <p><u>Comment</u> Noted and the drainage component is satisfactory subject to a letter from all the benefited lots giving consent to the new drainage easement.</p>

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 residential land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size	550m ²	Lot 1: 512m ² (excluding ROW)	6.9% (38m ²)	No
		Lot 2: 550m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	No
4.6 Exceptions to development standards	No
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance

Development standard:	Minimum Subdivision Lot Size
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Requirement:	550m ²
Proposed:	Proposed Lot 1: 512m ²
Percentage variation to requirement:	6.9%

Assessment of request to vary a development standard

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

(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.

Comment:

Clause 4.1 - Minimum subdivision lot size development standard is not 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.

(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
 - (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, and
- (b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters

required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request (attached to this report as an Appendix) has not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

There are sufficient environmental planning grounds to justify contravening the development standard. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed subdivision, which as discussed introduces an appropriate and compatible lot size within the locality, which promotes the orderly & economic use of the land (cl 1.3(c)).*

The above environmental planning grounds is not a general proposition. It is a unique circumstance to the proposed development, particularly the provision of new allotments that provide sufficient building area to accommodate new dwellings of a size and potential floor area for future occupants, with appropriate residential amenity.

The location of the future building platforms will allow for the development of the site's in a manner which is compatible with Council's current planning controls and will result not result in subdivision which is a typical to the character of the area, given the size and configuration the proposed allotments is compatible with the surrounding subdivision pattern. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the minimum subdivision lot size.

Council does not agree with the applicant's justification that the proposed subdivision achieves the objects of the EPA Act. While the extent of the breach to the development standard is not numerically significant, the lack of other critical elements to ensure safe and functional operation and use of the proposed lots, such as a vehicle passing bay and separated pedestrian access means that the minor non-compliance cannot be viewed as being an orderly use and development of the land.

Clause 4.6(6)(b) of PLEP 2014 prohibits Council from granting consent to a subdivision in the E4 Environmental Living zone that will result in at least one lot being less than 90% of the minimum area specified for such a lot by a development standard. In this case, the absolute minimum subdivision lot size Council could provide consent for is 495m². The proposed undersized lot is 17m² larger than the absolute minimum lot size.

To provide for the critical element of a vehicle passing bay, the extent of the right of carriageway on the undersized lot will likely have to be increased, thereby further reducing the lot size and impacting on the amenity and design of a low density residential lot. As a result, there is high probability that the lot size will fall below 495m², meaning Council would be unable to grant development consent to the subdivision.

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment. The request does not satisfy cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(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:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Minimum subdivision lot size development standard and the objectives of the E4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the PLEP 2014 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 proposed subdivision is not considered to appropriately integrate into the prevalent pattern, size and configuration of existing lots in the locality. The ability to provide functional residential lots is compromised due to the lack of safe and functional access to the lots.

(b) to provide for subdivision where all resulting lots are capable of providing for the construction of a building that is safe from hazards,

Comment:

The existing site is not subject to any significant natural hazard categorisation. It is likely that the proposed subdivision would be capable of providing for future development that is safe from hazards.

(c) to provide for subdivision where all resulting lots are capable of providing for buildings that will not unacceptably impact on the natural environment or the amenity of neighbouring properties,

Comment:

It is considered that the natural environment and amenity of neighbouring properties will be unreasonably impacted by the proposed subdivision due to the undersized nature of one of the lots.

(d) to provide for subdivision that does not adversely affect the heritage significance of any heritage item or heritage conservation area,

Comment:

No heritage items or conservation areas are located in the vicinity of the site.

(e) to provide for subdivision where all resulting lots can be provided with adequate and safe access and services,

Comment:

The proposed subdivision is not considered to provide safe and functional access for vehicles and pedestrians.

(f) to maintain the existing function and character of rural areas and minimise fragmentation of rural land,

Comment:

Not applicable, site not located in a rural area.

(g) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls,

Comment:

The proposed subdivision is not considered to provide lots of an appropriate size to adequately accommodate future development that is in line with other development controls.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

- ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

Comment:

Due to the proposed undersized lot, it is considered the proposed subdivision will likely have an unreasonable impact on the ecological significance of the site. To provide a safe and functional site, the footprint of buildings and hard surfaces on the undersized lot will have to increase, resulting in a diminished ability to provide an adequate amount of soft surface landscaping.

- ***To ensure that residential development does not have an adverse effect on those values.***

Comment:

Due to the need to increase the overall hard surface and subsequent loss of soft surface landscaping on the undersized lot, it is expected that future residential development will not be able to acceptably function or provide amenity to occupants.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***

Comment:

Due to the expected lack of soft surface landscaping that is able to be provided on the undersized lot, it is considered that future development within the subdivision will not be able to appropriately integrate with the natural landform and landscape of the site.

- ***To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.***

Comment:

The site is not identified as containing wildlife corridors or in proximity to riparian or foreshore vegetation.

Conclusion

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the E4 Environmental Living zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary 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 inconsistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Minimum Subdivision Lot Size Development Standard can not be assumed.

Pittwater 21 Development Control Plan

Built Form Controls

The proposed development relates to the demolition of existing structures and subdivision of the allotment. No works associated with any new dwelling or associated structure is proposed under this application.

As such, the P21DCP built form controls do not apply to this proposal.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.14 Warriewood Locality	No	No
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.2 Subdivision - Low Density Residential Areas	No	No
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.15 Stormwater	No	No
B6.2 Internal Driveways	No	No
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C4.1 Subdivision - Protection from Hazards	Yes	Yes
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities	No	No
C4.3 Subdivision - Transport and Traffic Management	N/A	N/A
C4.4 Subdivision - Public Roads, Footpath and Streetscape	N/A	N/A
C4.5 Subdivision - Utility Services	Yes	Yes
C4.6 Service and delivery vehicle access in subdivisions	N/A	N/A

Clause	Compliance with Requirements	Consistency Aims/Objectives
C4.7 Subdivision - Amenity and Design	No	No
C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots	N/A	N/A
D14.1 Character as viewed from a public place	Yes	Yes

Detailed Assessment

A4.14 Warriewood Locality

The proposed subdivision is not considered to achieve the desired character of the Warriewood locality. The desired character of the Warriewood locality includes the following statement:

Existing residential areas will remain primarily low-density with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

Due to the proposed non-compliant lot size and insufficient vehicle access provisions as discussed elsewhere in this report, the resultant area for the provision of a building footprint and landscaped area for future development on the lots is not expected to achieve the appropriate level of landscape integration.

Due to spatial constraints of the existing allotment, future development on the proposed allotments is expected to be significantly compromised and is unlikely to result in functional residential allotments.

B2.2 Subdivision - Low Density Residential Areas

Description of non-compliance

The control requires that any lot (or lots) created by a subdivision of an existing lot (or lots) shall have a minimum depth of 27m and a minimum width of 16m on land identified as Area 1 on the Landscaped Area Map.

Excluding the proposed right of carriageway and easement for services, proposed Lot 1 provides a minimum depth of 25.4m, therefore failing to comply with the control requirement. Proposed Lot 2 provides a minimum width of 15.03m, therefore failing to comply with the control requirement.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying outcomes of the clause as follows:

- ***Achieve the desired future character of the locality.***

Comment:

As discussed, the proposed subdivision is not considered to achieve the desired character of the Warriewood locality.

- ***Maintenance of the existing environment.***

Comment:

To enable appropriate access to the site, additional hard surface for the driveway will need to be provided to facilitate a passing bay. This will reduce the ability of the proposed lots to sustain a compliant amount of landscaped area and a functional dwelling. While proposed to be retained under the proposed subdivision, it is likely that the existing Norfolk Pine on the site will need to be removed to facilitate future development.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

Comment:

This application is for subdivision and demolition of existing structures only and it is therefore considered therefore considered equitable preservation of views and vistas to and/or from public/private places will be maintained. Any future dwelling will be subject to a separate development application which will include a view impact analysis.

- ***The built form does not dominate the natural setting.***

Comment:

While the proposed subdivision indicates that a sufficient amount of natural curtilage around future dwellings is able to be achieved, due to insufficiency regarding vehicle access to the lots, additional space will need to be reserved for a right of carriageway to allow a vehicle passing bay to be provided. This is expected to unreasonably reduce the natural setting for the proposed lots.

- ***Population density does not exceed the capacity of local and regional infrastructure and community services.***

Comment:

The proposed subdivision is within a low density residential zone and it is therefore considered the development will not contribute to a population density that exceeds the capacity of local and regional infrastructure and community services.

- ***Population density does not exceed the capacity of local and regional transport facilities.***

Comment:

The proposed subdivision is within a low density residential zone and it is therefore considered the development will not contribute to a population density that exceeds the capacity of local and regional transport facilities.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B5.15 Stormwater

Council's Development Engineer can not support the proposal as insufficient information has been submitted to address stormwater issues in compliance with Council's Water Management Policy.

The applicant proposes to implement a stormwater drainage easement across an adjacent downstream property (16B Lakeview Parade).

While consent from the owner 16B Lakeview Parade for the establishment of the stormwater drainage

easement has been received, the property is also is burdened by and benefits from other easements that affect adjacent properties, including a right of carriageway. To ensure other easements on the downstream properties are not impacted by the proposed stormwater drainage easement, consent is required from all property owners where existing easements apply.

Refer to Development Engineering referral comments for details.

B6.2 Internal Driveways

Description of non-compliance

The control requires that driveways exceeding 40m in length that access more than two dwellings must contain a passing bay to an overall minimum width of 5.0 metres for a length of 10 metres with suitable transitions to the adjacent narrow driveway.

The proposed subdivision does not include provision for a passing bay compliant with the above dimensions.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying outcomes of the clause as follows:

- ***Safe and convenient access.***

Comment:

Due to existing spatial constraints of the existing allotment and adjacent allotments, there is no ability to provide a passing bay within the access handle. This results in a driveway length of over 45m without the ability for vehicles to pass one another.

It is considered that risks associated with vehicle conflict within the access handle are unreasonable as a vehicle needing to wait for another vehicle to exit the site will need to wait on the public road. The site is located immediately to the west of a blind and crested corner which may lead to conflict with other vehicles on the public road.

As such, safe and convenient access to the site is unable to be achieved to the proposed lots.

- ***Reduce visual impact of driveways.***

Comment:

No change to the visual impact of the existing driveway is proposed.

- ***Pedestrian safety.***

Comment:

The subdivision does not separate access between vehicles and pedestrians. Due to the length of the driveway, it is considered that the safety of pedestrians accessing the site will be put at an unacceptable risk.

- ***An effective road drainage system.***

Comment:

Drainage is incorporated into the existing driveway.

- **Maximise the retention of trees and native vegetation.**

Comment:

No trees or significant vegetation is required to be removed to facilitate the driveway.

- **Reduce contaminate run-off from driveways.**

Comment:

The extent of hard surface associated with the driveway will be generally unchanged. No additional contaminate runoff issues are expected.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities

Description of non-compliance

The control requires that the design of each individual lot created within the subdivision is to provide for off street parking facilities compatible with the proposed development uses for that lot. Safe and functional access driveway must be designed and constructed from the road edge/kerb and gutter to the lot boundary for each individual lot within the subdivision as part of the subdivision works. Where an internal driveway is located within a 'right of way' or proposed 'right of way', the internal driveway is to be designed and constructed as part of the subdivision works.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying outcomes of the clause as follows:

- **Safe and functional access for vehicles, cyclists and pedestrians.**

Comment:

Safe and functional access to the proposed lots is not provided. The length of the existing driveway, the lack of a vehicle passing bay and the lack of separate pedestrian access means that conflict between vehicles and pedestrians on the driveway is highly likely.

- **Safe and convenient access and parking is provided on each lot.**

Comment:

Due to the spatial constraints of the existing allotment and the need to provide additional driveway area to facilitate functional vehicle access, the resultant space to provide parking on each lot is significantly decreased. Assessment of the provision of parking for future development on the lots would be undertaken in separate development applications.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C4.7 Subdivision - Amenity and Design

Description of non-compliance

The control requires that all properties achieve/retain a level of amenity commensurate with the locality and the desired character of the area and the impact on the environment of the completed development (including buildings to be constructed on the proposed lots) has an acceptable impact on the environment.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying outcomes of the clause as follows:

- ***Desired character of the locality.***

Comment:

As discussed, the proposed subdivision is not considered to achieve the desired character of the Warriewood locality.

- ***Protection of the natural environment.***

Comment:

To enable appropriate access to the site, additional hard surface for the driveway will need to be provided to facilitate a passing bay. This will reduce the ability of the proposed lots to sustain a compliant amount of landscaped area and a functional dwelling. While proposed to be retained under the proposed subdivision, it is likely that the existing Norfolk Pine on the site will need to be removed to facilitate future development.

- ***Ecologically sustainable development.***

Comment:

Due to the spatial constraints of the existing allotment, it is unlikely that the proposed subdivision will achieve the principles of ecologically sustainable development and is likely to result in poor amenity outcomes for future development on the lots.

- ***Minimal design constraints.***

Comment:

The existing allotment presents several constraints that limit the ability of the proposed subdivision to provide suitable amenity for the occupants of future development on the lots and surrounding dwellings.

- ***Adequate access and services.***

Comment:

As discussed, adequate access to the proposed lots cannot be provided.

- ***Access driveways to public roads are minimised.***

Comment:

The existing driveway is proposed to be retained for access to both proposed lots.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

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;
- Pittwater Local Environment Plan;
- Pittwater 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.1 Minimum Subdivision Lot Size has adequately addressed and demonstrated that:

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case;
and

b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2021/0715 for the Demolition works and Torrens Title subdivision of one lot into two lots on land at Lot B DP 419338, 11 B Hill Street, WARRIEWOOD, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to development standards of the Pittwater Local Environmental Plan 2014.

The submitted request to vary a development standard does not adequately justify that there are sufficient environmental planning grounds to vary the minimum subdivision lot size development standard. The proposed development is not considered to be an orderly use and development of the land.

3. 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 B2.2 Subdivision - Low Density Residential Areas of the Pittwater 21 Development Control Plan.

The proposed development does not adequately address the requirements of the control due to the insufficient lot size and dimensions. Variation to the control requirements cannot be justified due to inconsistency with the outcomes of the control.

4. 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 B5.15 Stormwater of the Pittwater 21 Development Control Plan.

The applicant has not adequately demonstrated that the proposed stormwater disposal system complies with the requirements of Council's Water Management for Development Policy.

5. 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 B6.2 Internal Driveways of the Pittwater 21 Development Control Plan.

The proposed development does not provide safe and functional vehicle and pedestrian access to the proposed lots.

6. 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 C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities of the Pittwater 21 Development Control Plan.

The proposed development does not provide safe and functional vehicle and pedestrian access to the proposed lots.

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 C4.7 Subdivision - Amenity and Design of the Pittwater 21 Development Control Plan.

The proposed development does not demonstrate adequate amenity and design characteristics of low density residential lots for occupants of future development.

8. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Nick Keeler, Planner

The application is determined on 26/11/2021, under the delegated authority of:



Tony Collier, Acting Development Assessment Manager