

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0147
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<b>Responsible Officer:</b>	Anne-Marie Young
<b>Land to be developed (Address):</b>	Lot 10 DP 14040, 14 Ellen Street CURL CURL NSW 2096 Lot 101 DP 1224100, 16 Ellen Street CURL CURL NSW 2096 Lot 102 DP 1224100, 2 Wyadra Avenue FRESHWATER NSW 2096
<b>Proposed Development:</b>	Consolidation of 3 lots into one lot and resubdivision into 3 Torrens Title lots
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Terence William Jones Lynne Ellen Jones Mark Robert Aubrey Megan Aubrey
<b>Applicant:</b>	Mark Robert Aubrey

<b>Application Lodged:</b>	19/02/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	26/10/2020 to 09/11/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	16
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 20,000.00
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### EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of development application DA2020/0147 for the consolidation of three (3) existing allotments 14 Ellen Street, 16 Ellen Street and 2 Wyadra Avenue and the re-subdivision and boundary adjustment to create three (3) lots. The boundary adjustment includes the removal of a strip of land along the southern boundary of No. 16 Ellen Street to be included in lot 3 at No. 2 Wyadra Avenue. All three (3) amended lots comply with the minimum 450sqm lot size and subject to standard Council conditions relating to drainage and servicing generally comply with all subdivisions controls.

An amended concept building envelope has been submitted following mediation between the primary objector and applicant which includes a 1.5m height reduction of the indicative dwelling and a reduction in the footprint to the east. The amended envelope generally complies with all built form controls including building height, wall height, front and side setback and landscape open space requirements. The indicative envelope confirms that a dwelling can be accommodated on the site without causing unreasonable environmental impacts or impacts on neighbouring amenity, with particular reference to view sharing. The Panel are advised that DA2015/1123 granted consent for a two / three storey dwelling on the northern part of lot 3 known as 2 Wyadra Avenue and this consent has been activated with the construction of the driveway. It is noted that the indicative height of the proposed dwelling sits up to 3.2m lower than the approved dwelling.

The assessment of the detailed design of the dwelling including consideration of impacts on residential amenity and the natural environment will be subject to a separate development application.

The application is being referred to the NBLPP as a total of eleven (11) unique submissions were received in relation to the original application. The issues raised in the submission are largely addressed with the amended envelope and through consideration of any development application for the detailed design for the dwelling at No. 2 Wyadra Avenue. The amended plans were re-notified and one submission was received requesting the applicant to agree to a positive covenant to restrict the building envelope as agreed through mediation. It is Council's view that a planning condition requiring a positive covenant to limit the envelope is not reasonable or relevant as the envelope plans will form part of the approval should the Panel decide to approve the subject subdivision application.

In summary, the Panel can be satisfied that the proposal meets the aims and objectives and outcomes of the relevant policies and controls as detailed in the body of this report. On balance, the proposal is recommended for approval having considered the relevant issues as part of the assessment of the plans submitted.

## **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks consent for the consolidation of the three (3) existing allotments 14 Ellen Street, 16 Ellen Street and 2 Wyadra Avenue and re-subdivision to create three (3) lots, retaining the existing two (2) dwelling houses and an indicative building envelope for a new two (2) storey dwelling. In detail the proposal includes:

### *Subdivision*

- 14 Ellen Street - A boundary adjustment to the rear of 14 Ellen Street to add part of the garden of 2 Wyadra Avenue. A 1140mm right of way (ROW) is proposed along the southern boundary to provide pedestrian access to and from 2 Wyadra Avenue to Ellen Street. The proposed adjusted lot measures 450sqm (excluding the 45sqm ROW);
- 16 Ellen Street - A boundary adjustment between 14 Ellen Street and 16 Ellen Street to remove 1340mm strip of land along the southern boundary of 16 Ellen Street. Existing services to 16

Ellen Street are to be relocated north within the new boundary. A further boundary adjustment is proposed along the western boundary to include a strip of land from the existing approved lot 3 (2 Wyadra Avenue). The proposed adjusted lot remains to be 493sqm, and

- 2 Wyadra Avenue - A boundary adjustment to add the rear of 14 Ellen Street to the south of 2 Wyadra Avenue and. A further boundary adjustment to include a strip of land from lot 3, (2 Wyadra Avenue) into 16 Ellen Street. The proposed adjusted lot measures 587sqm (excluding the 99sqm access handle).

### Indicative building envelope

Amended plans have been submitted which provide details of the envelope of a future two storey dwelling at 2 Wyadra Avenue. The detailed design of the dwelling will be subject to a separate DA. The indicative plans show that the existing detached structure currently located to the rear of 14 Ellen Street will be demolished will be demolished and the footprint of the future new dwelling will sit over the footprint of the existing structure extending further to the east and north. The indicative plans show a car port located to the north of the dwelling accessed via a proposed parking platform off the existing driveway. A traffic report provide details of two options, option 1 a level parking platform and turntable and option 2 a ramp leading to internal parking.

The footprint and height of the indicative building envelope has been amended to include the following:

- A reduction in the height of the envelope by 1500mm;
- Additional excavation to a depth of 2977m to allow the future dwelling to sit lower into the site, The indicative roof height of the dwelling sits at RL41.840;
- A relocation of the footprint of the dwelling with the dwelling relocated 3000m to the south;
- A reduction in the footprint of the dwelling to increase the setback 1.2m to the east;
- A change in the parking with the introduction of car port to the north of the dwelling which will be accessed via a parking platform. The roof of the car port sits at RL44.400.

## **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

Warringah Local Environmental Plan 2011 - 6.2 Earthworks  
 Warringah Development Control Plan - B9 Rear Boundary Setbacks  
 Warringah Development Control Plan - C1 Subdivision  
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting  
 Warringah Development Control Plan - D7 Views  
 Warringah Development Control Plan - D8 Privacy  
 Warringah Development Control Plan - E2 Prescribed Vegetation  
 Warringah Development Control Plan - E5 Native Vegetation  
 Warringah Development Control Plan - E6 Retaining unique environmental features  
 Warringah Development Control Plan - E10 Landslip Risk

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot 10 DP 14040 , 14 Ellen Street CURL CURL NSW 2096</p> <p>Lot 101 DP 1224100 , 16 Ellen Street CURL CURL NSW 2096</p> <p>Lot 102 DP 1224100 , 2 Wyadra Avenue FRESHWATER NSW 2096</p>
<b>Detailed Site Description:</b>	<p>The subject site consists of three (3) lots, namely:</p> <p>Lot 10, Deposited Plan No. 14040, 14 Ellen Street Curl Curl;</p> <p>Lot 101, Deposited Plan No. 1224100, 16 Ellen Street, Curl Curl;</p> <p>Lot 102, Deposited Plan No. 1224100, 2 Wyadra Avenue, Freshwater.</p> <p>The Ellen Street lots are located near the north end of Ellen Street on the high western side of the street. Wyadra Avenue is a battle axe shaped allotment high above and behind the Ellen Street lots. It was a created by a subdivision of 16 Ellen Street (DA2015/1123).</p> <p>14 Ellen Street has a site width of 12.575m and an area of 633sqm and is developed with a three storey dwelling house with an integrated double garage at the front. It has a single storey structure to the rear of the site above and behind the house on top of the cliff and accessed by a set of stairs along the south side of the house. 14 Ellen Street has a total site area of 633sqm.</p> <p>16 Ellen Street has a site width of 18.67m and an area of 493sqm and is developed with a three storey dwelling house with an integrated double garage at the front. 16 Ellen Street has a total site area of 493sqm.</p> <p>The battle axe lot at 2 Wyadra Avenue was a result of a recent subdivision of 16 Ellen Street (DA2015/1123). 2 Wyadra Avenue is a vacant battle axe shaped allotment with</p>

a narrow access handle with a new concrete driveway from Wyadra Avenue. There is a set of timber stairs for access from the driveway to the the north-western corner of the site. The site has a total area of 549sqm.

The site is located within the R2 Low Density Residential zone from the WLEP 2011.

A large rock shelf sits near the centre of the site that in effect, cuts the site in half in terms of usable land and creates a platform on the western side that can accommodate a dwelling. There is no significant vegetation on the site.

### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by detached dwellings which are primarily two and three storeys in height. Stewart House, a local heritage item, is located to the immediate north. Curl Curl Beach is located to the east.

Map:



### **SITE HISTORY**

A search of Council records revealed the following relevant history:

#### 14 Ellen Street

DA1998/10778 for alterations and additions to an existing cottage at 14 Ellen Street was approved on 9 February 1999. The approval included a single storey enclosed structure in the rear (western) section of the site with a deck annotated to reference a "gazebo". A walkway and stairs leading from the rear



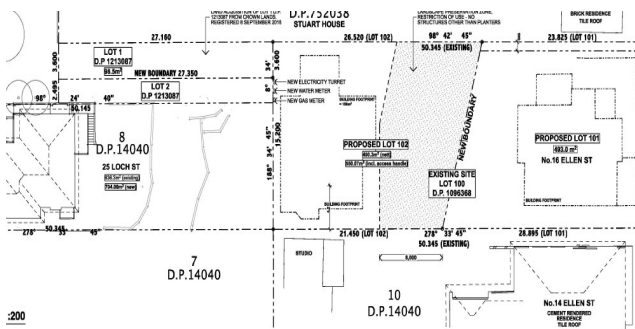
lower garden to the structure were also approved.

16 Ellen Street

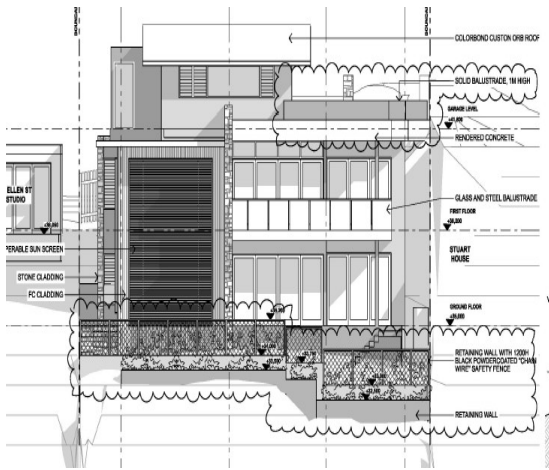
DA2005/0741 for site consolidation and two lot subdivision was refused on 8 June 2006 for the following reasons:

1. Pursuant to Clause 8F of the Environmental Planning and Assessment Regulation 2000, the application does not provide valid owner's consent for utilising a Crown Road Reserve for access purposes.
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and the FS Curl Curl Locality Statement of Warringah Local Environmental Plan 2000, the proposal is inconsistent with the Desired Future Character of the FS Locality.
3. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and the Built Form Control of the FS Curl Curl Locality Statement of Warringah Local Environmental Plan 2000, the proposal does not comply with the Housing Density provisions of the FS Locality Statement.
4. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and the Built Form Control of the FS Curl Curl Locality Statement of Warringah Local Environmental Plan 2000, the proposal will result in a numerical shortfall of Landscaped Open Space provision in proposed Lot 1 following subdivision, and a qualitative shortfall in relation to Lot 2.
5. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and Clause 38 Glare and Reflection of Warringah Local Environmental Plan 2000, the proposal will result in glare or light overspill that adversely impacts on the adjoining residence.
6. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and Clause 43 Noise of Warringah Local Environmental Plan 2000, the proposal will result in noise emission that adversely impacts on the adjoining residence.
7. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and Clause 56 Retaining Unique Environmental Features on Site of Warringah Local Environmental Plan 2000, the proposal is incompatible with the natural landscape feature on the site.
8. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and Schedule 7- Matters for Consideration in a Subdivision of Land under Warringah Local Environmental Plan 2000, the proposal does not comply with the allotment dimensions provisions of Schedule 7.

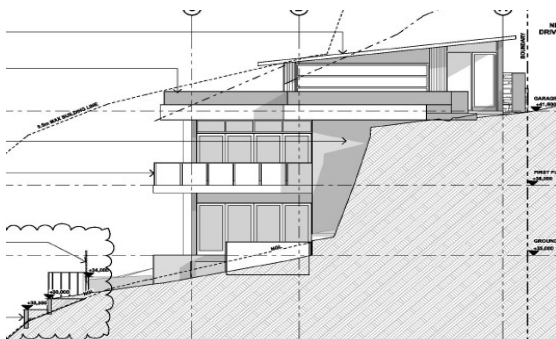
DA2015/1123 for the construction of a part two / three storey dwelling house double garage and driveway and subdivision of 1 lot into 2 lots was approved on 9 June 2016. The approval relates to the northern portion of the new lot to 2 Wyadra Avenue, refer to plans below. It is noted that the consent has been activated with the construction of the driveway.



Approved subdivision lot and footprint of new dwelling



Approved east elevation



Approved north elevation

### History of subject DA

On 23 September 2020 amended plans were submitted detailing a revised indicative building envelope following mediation with the owners of No. 23 and 25 Loch Street. In detail, the modifications include:

- The roof of the dwelling has been lowered 1500mm amended roof RL41.840;
- The footprint of the dwelling has been reduced with the indicative ground floor bedroom and bathroom deleted;
- Ground floor lowered by 480mm as a result of an increasing excavation to a depth of 2977mm;
- The dwelling footprint has been relocated 3000mm closer to the southern boundary;
- The dwelling footprint has been setback a further 1.2m from the eastern boundary;
- A carport has been introduced to be located north of the dwelling accessed via the proposed parking platform. The indicative dimensions are 4170mm x 9150mm x 3060mm in height;
- Bin store shifted north;
- East eaves reduced 600mm;

- North eaves reduced 1100mm;
- Inclusion of full height privacy screens to west and south face of carport, and
- Skylight deleted.

The amended traffic report described two options for parking:

Option 1 - flat parking platform as per the amended envelope which depicts a parking platform and car port located within the northern section of the site.

Option 2 - Ramped portion to internal parking as per the original envelope.

Height poles have been installed to reflect the approved dwelling pursuant to DA2015/1123 (blue poles) and both the original proposed envelope (red poles) and the amended envelope (green poles).

## 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	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
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&amp;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&amp;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&amp;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&amp;A Regulation 2000 requires the consent</p>



Section 4.15 Matters for Consideration'	Comments
	<p>authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;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&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;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&amp;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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable 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	No matters have arisen in this assessment that would justify the refusal of the application 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 26/10/2020 to 09/11/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 16 submission/s from:

Name:	Address:
Mr Stephan Nicholas David	4 / 28 Loch Street FRESHWATER NSW 2096
Mr Crispin Marcel Swan	17 Loch Street FRESHWATER NSW 2096
Trustees Of Stewart House	44 Carrington Parade CURL CURL NSW 2096
Jamie Cockerill	5 Batho Street FRESHWATER NSW 2096
Dr Raymond Harvey Owen	8 Loch Street FRESHWATER NSW 2096
Mr Scott Marshall Nowell	5 Loch Street FRESHWATER NSW 2096
Mr Andrew Robin Smith	25 Loch Street FRESHWATER NSW 2096
Mrs Jenny Thompson	15 Loch Street FRESHWATER NSW 2096
Dominica Andersen	2 / 28 Loch Street FRESHWATER NSW 2096
Mr Darren Andrew Holland	23 Loch Street FRESHWATER NSW 2096
Ms Tania Brenda Holland	23 Loch Street FRESHWATER NSW 2096
Willowtree Planning	Suite 4, L7, 100 Walker Street NORTH SYDNEY NSW 2060
Mr Mark Andrew Casazza	21 Loch Street FRESHWATER NSW 2096
Withheld	REDFERN NSW 2016
Mrs Tania Holland Mr Darren Holland	23 Loch Street FRESHWATER NSW 2096
Holding Redlich Lawyers	Level 65 MLC Centre 19 Martin Place SYDNEY NSW 2000

A total of fourteen (14) submissions are registered as been received following notification of the original DA. Three (3) submissions were received from the owners of No 23 and No 25 Loch Street. In addition, three submissions were received from two separate Planning consultants and a lawyer in respect of concerns from the same owner of No 23 and No 25 Loch Street. The total number of relevant submissions is therefore calculated to be eleven (11).

Following mediation with the primary objectors the application was amended on the 23 September 2020. The amended application was re-notified and at the time of writing this report two (2) additional submission were received. One from a person that lodged a submission to the original proposal reiterating issues with the loss of public land and one from a lawyer on behalf of the owners of No. 23 and No 25 Loch Street stating that the amended scheme is supported subject to a number of conditions. The requested conditions include a request for the registration of a restrictive covenant limiting the building height, no structures (plant, machinery, discs or antennae) to exceed the approved building height, solar panels to be a non reflective material, an acoustic consultant be engaged to ensure noise from the car port will not exceed 5bB(A) to No 23 and No 25 Loch Street, materials of the roof to be non-reflective and ancillary structures not to exceed the maximum height. A response to the requested conditions and other issues is provided below along with a response to the primary issues raised through the pubic consultation process.

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

- View loss;
- Irregular lot which is too small;
- Privacy issues;
- Overdevelopment of the site;
- Insufficient open space;
- Visual impact from Curl Curl Beach;
- Impacts on solar access;
- Loss of bushland and impacts on wildlife;
- Impacts of rock outcrop;
- Construction impacts;
- Precedent;
- Unlawful secondary dwelling at No. 14 Ellen Street;
- Loss of public land, and
- Conditions are required to address amenity issues.

The matters raised within the submissions are addressed as follows:

- **View loss to Curl Curl beach and the ocean. The increase in the size of the allotment to 2 Wyadra Avenue and the height and scale of the indicative dwelling and parking platform will impact on ocean views from the neighbouring dwellings. The proposal will also impact on ocean views from the dwellings as approved to be modified. The proposed house should be re-located to minimise view loss.**

Comment:

The DA seeks consent for subdivision, no work is proposed as part of this application. The indicative plans which provide details on the envelope of a future dwelling at 2 Wyadra Avenue have however been assessed and to determine the extent of view loss from the proposal, Council has applied the four principles outlined within the Land and Environment Court case *Tenacity Consulting v Warringah Council*. This is discussed in detail under section Clause D7 of this report.

In summary, the nature of the view (principle 1) are ocean views and views of the land interface with Curl Curl Beach. Principle 2 view from neighboring properties to the west and south-west can be observed from living rooms, kitchens, bedrooms and decks across the rear and side boundaries of the subject site. Principle 3 the extent of the impact has been reduced with the amended design which reduced the height of the envelope by 1500mm and modify the building footprint. Principle 4, the amended plans indicate that the envelope generally complies with the built form controls and has been assessed as reasonable with moderate to minor view loss.

- ***The subdivision pattern is irregular and not in consistent with the existing pattern of development in terms of its configuration and size and is inconsistent with the objectives of the R2 Low Density Residential zone and the clause 4.1 in regards to minimum lot size;***

Comment:

It is agreed that the subdivision pattern is irregular and different to the majority of traditional rectangular shaped subdivision lots in the surrounding area. It is however noted that Stewart House, which adjoins the subject site to the immediate north, is the exception to the traditional

pattern with a large building occupying a parcel of land extending from Carrington Parade to Batho Street.

Furthermore, DA2015/1123 approved the battle axe lot known as 2 Wyadra Avenue and the construction of the driveway to this new lot activated the 2015 consent. As such, the former consent has established the pattern of development. The subject DA seeks to reconfigure the boundaries of the lot to include a portion of the existing land at No 14 Ellen Street. The increase in the size of the lot ensure that there is sufficient space to sit the future dwelling on the lot while minimising impacts on the landform and neighbouring properties. All three lots comply with the minimum lot size. The issue on sub-division is discussed in further detail under Clause 2.3 of the WLEP 2011 and Clause C1 of the WDCP.

- ***Loss of privacy to rear yards of Ellen Street and Loch Street;***

Comment:

The DA seeks consent for subdivision and the detail design of the future dwelling at No 2 Wyadra Avenue including the location of windows and private open space will be considered as part of the merit assessment of any future DA for the dwelling.

Despite this the concept plans demonstrate a future dwelling can be accommodated on the site without creating unreasonable impacts on neighbours in terms of loss of privacy. The indicative details demonstrate that there are no windows on the rear (west elevation) of the future dwelling and a privacy screen will be installed along the western and southern edge of the car port.

Refer to further discussion under Clause D8 Privacy.

- **The proposal represents over development of the site in terms of the the increase in the lot size to 2 Wyadra Avenue and the height, bulk and scale of the indicative new dwelling;**

Comment:

The proposal is compliant with the lot size and the envelope of the dwelling sits 1.5m below the maximum 8.5m height limit. With the exception of the minor breach in rear setback is generally compliant with all other the built form controls. The proposal has been amended to reduce the footprint and height of the indicative envelope. The amended concept plans demonstrate that a dwelling can be accommodated on the site. A condition will require compliance with the amended concept plan which will ensure that the density, bulk, height and scale of the future dwelling remains complaint with the built form controls.

It is noted that the owner of No 23 and No 25 Loch Street has requested the a planning condition be imposed requiring a positive covenant to limit the maximum height. It is not considered necessary to impose a requirement by way of a planning condition for a positive covenant relating to the building envelope to allow the subdivision to be permitted. Reference is made by the objector to case law (Parrot v Kiama (2004) NSWLEC 77) where the Courts held that such conditions are appropriate in certain circumstances. The positive covenant, in this case, related to a drainage easement and it is agreed a covenant would be the appropriate and established mechanism to protect downstream properties. The circumstances and need for the positive covenant by way of a planning condition were therefore quite different.

In regards to the subject sub-division, a condition will be included in any approval requiring compliance with the amended indicative envelope plans which specifies RL's for the dwelling and car port. This condition is considered to be reasonable, relevant, precise and enforceable. Should the applicant decide to include a restrictive covenant on the land relating to a maximum RL (height) this can also be achieved independently of the Council approval.

- **It is unclear whether a sufficient amount of impermeable landscape open space is provided to the new lot;**

Comment:

A detailed assessment of landscape open space is discussed under Clause D1 of this report. In summary, it is confirmed that the lot known as 2 Wyadra Avenue provides a compliant 40% site area of landscape open space.

- **Visual impact from Curl Curl Beach;**

Comment:

The topography of the land rises to the west and the existing dwellings, located to the rear at No. 23 and No. 25 Loch Street, will continue to sit at a higher level than the future dwelling at No. 2 Wyadra Avenue. As such, there will be limited visual impact of the future dwelling when looking west from Curl Curl Beach. This issue of visual impact of the dwelling from Curl Curl Beach will be assessed in greater detail as part of the future DA for the construction of the dwelling.

- **Impacts from construction noise and vibration from rock drilling should be managed to protect the amenity of the children in residence at Stewart House. In addition, any damage caused during construction should be rectified and reimbursed by the applicant;**

Comment:

The proposal is for subdivision including the re-alignment of lot boundaries, no work is proposed as part of this application. Any future DA for the dwelling will be required to be supported with a geotechnical report which will make recommendations for managing construction noise and vibration. Standard conditions on the future DA for the construction of the dwelling will also restrict demolition and excavation and require pre and post dilapidation reports to ensure that any damage to neighbouring properties during construction is rectified by the applicant.

- **Impact on solar access to neighbouring properties;**

Comment:

The proposal is for subdivision including the re-alignment of lot boundaries. Any future DA for the construction of the dwelling shall include shadow diagrams to demonstrate compliance with the solar access requirements of the WDCP. Despite this it is noted that the concept plans demonstrate that the envelope for the future dwelling is generally compliant with the built form control that are designed to protect solar access to neighbouring properties.

- **Loss of bushland and Impacts to wildlife.**

Comment:

The proposal is for subdivision including the re-alignment of lot boundaries. It is considered that compliance with the applicable provisions relating to wildlife and bushland will be assessed at the stage of any further development applications, and/or has been assessed through the previous assessment processes for the existing consent. It is also noted that the site has been altered with the construction of the detached structure to the rear of No. 14 Ellen Street and a site visit confirmed that there is limited significant bushland on the remaining part of the site.



- **The site is constrained in terms of the rock platform and steeply sloping site the proposal will impact to the natural landform / the rock outcrop;**

Comment:

It is agreed that the site is constrained with with the significant slope and the rock outcrop. The subject application is for subdivision including the re-alignment of lot boundaries, it does not seek consent for any building or structural works. Compliance with the applicable provisions relating to sloping land, earthwork and retaining of unique environmental features will be assessed at the stage of any further development applications. It is noted that the amended envelope increased the setback of the future dwelling from the edge of escarpment in order to protect this unique feature of the site.

Furthermore, issues relating to impacts on the rock outcrop were considered under the assessment of DA2015/1123 for the approval of a dwelling (including excavation) which were assessed as acceptable. The assessment of DA2015/1123 included consideration of a geotechnical report which made recommendations for the design and construction of the dwelling. It is noted that this consent has been activated with the construction of the access road.

- **The proposal will create a precedent for other similar developments;**

Comment:

Given the unique circumstances of this site it is not considered that approval will set a precedent for other similar developments.

- **The secondary dwelling in the rear of No. 14 Ellen Street is unlawful.**

Comment:

A search of Council records confirm that the structure referred to as a "secondary dwelling" in the applicants documentation was approved as a "gazebo" in the rear western end of garden to No. 14 Ellen Street under DA1998/10778.

- ***The DA should not allow the loss of public land for private gain.***

Comment:

The driveway leading from Batho Street to No. 2 Wyadra Avenue was approved under DA2015/1123 and has since been constructed. A 95sqm portion of land was acquired from Crown Lands to facilitate the access and (Lot 1 DP 1213087) was registered on 8 September 2015. The issue relating to the loss of public land is therefore not relevant to the subject DA.

- ***Conditions to be imposed on the consent relating to roof top plant, roof colour and materials and the need for acoustic verification in respect of the use of the car port.***

Comment:

The DA is for sub-division only. Matters relating to roof colour and materials, roof top plant and potential acoustic impacts from the use of the car port will be considered as part of the

assessment of any DA for the future house.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposal is noted to be for subdivision only.</p> <p>From a landscape perspective, the sites contain significant rock outcrops which form part of an escarpment running along the rear of the properties.</p> <p>Any future development would need to protect the escarpment and rock outcrops. It's difficult to assess actual impacts as only indicative building outlines are provided. Providing that the escarpment can be retained, no objections are raised with regard to landscape issues.</p>
NECC (Bushland and Biodiversity)	<p>The following biodiversity-related provisions apply to the subject site:</p> <ul style="list-style-type: none"> <li>- Warringah DCP Clause E2 Prescribed Vegetation</li> <li>- Warringah DCP Clause E5 Native Vegetation</li> <li>- Warringah DCP Clause E6 Retaining unique environmental features</li> </ul> <p>The proposal is for subdivision lot boundary amendments. It is considered that compliance with the applicable provisions will be assessed at the stage of any further development applications, and/or has been assessed through the previous assessment processes for the existing consent.</p>
NECC (Coast and Catchments)	<p>The proposal is supported without condition. The site is not impacted by coastal processes or covered by the Coastal Management Act or State Environmental Planning Policy.</p>
NECC (Development Engineering)	<p><b>Comments 2/11/2020</b> The TTW Traffic report dated 4 September 2020 detailing the provision of a vehicle turntable is supported subject to Council's Traffic Engineers concurrence. Conditions to be provided.</p> <p><b>Comments 2/7/20</b> The previous development engineering comments have not been addressed therefore the application is not supported.</p> <p><b>Comments 2/4/2020</b> The 3 Lot resubdivision is not acceptable for the following reasons:</p> <ol style="list-style-type: none"> <li>1) No details have been provided of the proposed parking platform, These would include typical cross sections with existing and finished surface levels, retaining wall locations etc. An engineering plan drawn at a suitable scale prepared by a suitably qualified engineer.</li> <li>2) The proposed parking platform is to demonstrate compliance with AS2890.1 2004- Off Street Carparking such that the turning templates detail the ability of a typical service vehicle to exit the site in a forward</li> </ol>

Internal Referral Body	Comments		
	<p>direction.</p> <p>3) A stormwater management report/calculations are to be provided to demonstrate the existing stormwater easement/stormwater line has adequate capacity to handle the additional flow in a 1 in 100 AEP event for the increased lot size ( No 2 Wyadra Avenue).</p> <p>4) Details are to be provided of the lot(s) that benefit from the ROW easement denoted A (DP1213087)</p>		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	<p>This application has been referred as it is in the vicinity of a listed heritage item, being <b>Item I128 - Building known as "Stewart House", Carrington Parade, South Curl Curl</b>, listed in Schedule 5 of Warringah Local Environmental Plan 2011.</p> <p>The subject site is located adjacent to the upper southern boundary of the Stewart House site, approximately 40 metres from the original Stewart House building which is the subject of the heritage listing.</p>		
	Details of heritage items affected		
	<p>Details of the heritage item in the vicinity, as included in the Warringah Heritage Inventory are:</p> <p><b>Item I128 - Building known as "Stewart House", Carrington Parade, South Curl Curl</b></p> <p><u>Statement of Significance</u></p> <p>A representative example of the institutional buildings which were erected in the area to provide health &amp; welfare services associated with the sea. Socially important due to the role that it has played in public health &amp; child welfare since 1930.</p> <p><u>Physical Description</u></p> <p>Elevated face brick building of symmetrical design &amp; central entrance. Tiled hipped roof with stepped parapet centrally located above entrance pavillion. Projecting bays at either end. Flat roofed (enclosed) verandahs with terracotta shingle skirts.Circular driveway at front. Central stairway to entrance. Flagpole.</p>		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
RAIA Register of 20th	No		

Internal Referral Body	Comments		
	Century Buildings of Significance		
	Other	No	
	Consideration of Application		
	<p>This application proposes the consolidation and re-subdivision of three existing allotments, being 14 and 16 Ellen Street and 2 Wyadra Ave. While an indicative dwelling is shown on 2 Wyadra Ave, this application only involves subdivision and no construction is proposed. The 2 dwellings on 14 and 16 Ellen Street are remaining.</p> <p>Given the distance of the site from the original Stewart House building fronting Carrington Parade and the fact that this application is only for consolidation and re-subdivision, there will be no impact upon the heritage significance of the heritage item which is "Stewart House".</p> <p><b>Therefore, no objections are raised on heritage grounds and no conditions required.</b></p> <p><u>Consider against the provisions of CL5.10 of WLEP 2011</u>  Is a Conservation Management Plan (CMP) Required? No  Has a CMP been provided? N/A  Is a Heritage Impact Statement required? No  Has a Heritage Impact Statement been provided? N/A</p>		
Traffic Engineer	No objections subject to conditions.		

## 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.

## Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	450sqm	Lot 1 - 14 Ellen Street 450sqm (excluding the ROW) Lot 2 - 16 Ellen Street 493sqm Lot 3 - 2 Wyadra Avenue 587sqm (excluding access handle)	N/A N/A N/A	Yes Yes Yes
Height of Indicative Buildings / Envelope:	8.5m	6.8m envelope of future dwelling 6m envelope of car port	N/A N/A	Yes Yes

### Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

### Detailed Assessment

#### 6.2 Earthworks

The subject application is for subdivision, it does not seek consent for any building or structural works. The indicative building envelope for the future dwelling includes a concept for excavation to a depth of 2.9m. It is noted that development consent DA2015/1123 approved excavation up to a depth of 3.7m to facilitate the construction of a new two / three storey house. A geotechnical report was submitted with DA2015/1123 and the earthworks were assessed as acceptable.

Council's Engineer has no objections to the sub-division application, subject to conditions, who confirms that any future DA for the dwelling house will be required to be supported with a geotechnical report to assess the impacts of future earthworks on existing drainage patterns and soil stability in the locality and provide recommendations to ensure compliance with the provision of Clause 6.2 3 (a) and Clause 6.4 (Development on sloping sites) of the WLEP 2011.

## Warringah Development Control Plan



### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.2m	N/A	Yes
B2 Number of storeys	2 /3	2	N/A	Yes
B3 Side Boundary Envelope	5m	5m (west)	N/A	Yes
	5m	5m (south)	N/A	Yes
B5 Side Boundary Setbacks	0.9m	0.9m (west)	N/A	Yes
	0.9m	1.7m (south)	N/A	Yes
B7 Front Boundary Setbacks	6.5m (To Batho Street)	28m	N/A	Yes
B9 Rear Boundary Setbacks	6m (To the western boundary with No 23 and No 25 Loch Street)	0.9m	N/A	No
	6m (to the eastern boundary)	4m -5.5m to 14 Ellen Street 12.8m to 16 Ellen Street	33.4% N/A	No Yes
	6m (to the eastern boundary)	12.8m to 16 Ellen Street	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	2 Wyadra Ave - 40% (234sqm)	261sqm (44%)	N/A	Yes
	16 Ellen Street 40% (197sqm)	241sqm (52.9%)	N/A	Yes
	14 Ellen Street 40% (180sqm)	129.6sqm (28.8%) 143.6sqm (including deck and paved areas) (31.9%)	11.2% 9.1%	No

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C1 Subdivision	No	Yes
C2 Traffic, Access and Safety	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

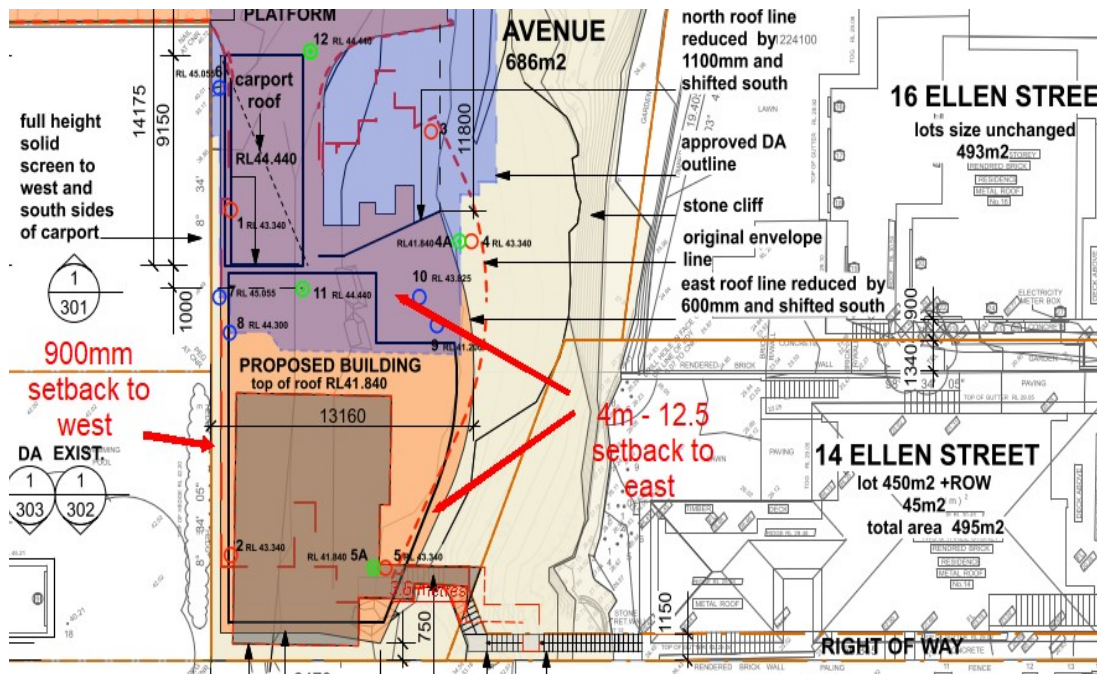
#### **B9 Rear Boundary Setbacks**

Clause B9 requires:

- development is to maintain a minimum setback to rear boundaries.
- The rear setback area is to be landscaped and free of any above or below ground structures.
- On land zoned R3 Medium Density where there is a 6m rear boundary setback, above and below ground structures and private open space, including basement carparking, vehicle access ramps, balconies, terraces, and the like shall not encroach the rear building setback.

#### Comment:

As mentioned in the Built Form Control table section above, the proposal is located a minimum of 900mm from the western boundary shared with No. 23 and No 25 Loch Street. Due to this site being a battle axe lot, the western boundary to No. 23 and 25 Loch Street is an internal boundary, however, in this particular case it is reasonable to use the objectives listed below to assess this aspect of the indicative building envelope.



East and west setback

#### Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

#### Comment:

The site will contain 44% landscaped open space for future landscaping and will protect the l

- *To create a sense of openness in rear yards.*

#### Comment:

The 900mm setback to the western boundary will not facilitate the creation of a sense of openness between the subject dwelling and the western boundary. However, the need to locate the dwelling away from the rock shelf means that a 6.0m setback to the boundary with No. 23 and 25 Loch Street is impractical. Furthermore the siting to the western boundary is similar to the part 2/3 dwelling approved under DA2015/1123.

The western elevation of the dwelling has been reduced to sit at a maximum height of approximately 4m. This is 4.5m below the 8.5m maximum height limit and 2.3m lower than the approved dwelling. Landscaping is proposed within the setback area to screen the western elevation which has also been designed to be reasonably articulated.

Given the unique circumstances of the site, the need to preserve the rock shelf, the compliance with the minimum lot size the increase setbacks to the south and east and the reduced height the indicative envelope has been assessed as providing a reasonable sense of openness in compliance with objective 2.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The amended envelope addresses issues in respect of visual and acoustic privacy between the future dwelling and neighbouring dwelling. The indicative envelope suggests that no windows will be located along the western boundary and it is likely that the windows will take advantage of ocean view to the east. It is also noted that the amended envelope includes a full height solid screen to the west and south side of the carport which has been included to protect the privacy of the neighbouring properties No. 23 and No. 25 Loch Street. The detailed design of the dwelling will be subject to a future DA where a full assessment of issues relating to privacy will be considered.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The proposal will add a new dwelling in a location that has not previously contained a dwelling. The dwelling will, in part, replace the existing single storey studio located to the rear of No. 14 Ellen Street and occupy, in part, the footprint of the 2/3 storey dwelling approved under DA2015/1123.

It is also noted that the indicative siting of the dwelling is consistent with the alignment of Stewart House, a large multi unit building, located to the north. The indicative envelope will preserve the large rock shelf on the site, which is the main unique feature of landscape. The proposal will meet the minimum lot size control, and will reasonably maintain the pattern of buildings, rear gardens and landscape elements.

- To provide opportunities to maintain privacy between dwellings.

Comment:

As discussed above, the indicative envelope demonstrates that a dwelling can be accommodated on the site which will ensure that opportunities to maintain privacy between dwellings is maintained.

2 Wyadra Avenue is a battle axe site with the frontage taken to be Batho Street. As such, it could be argued that the rear boundary is to the east and the setback of the dwelling to the rear (eastern boundary) is between 4m to 12.8m with a building separation of 12.9m to the rear of No. 14 Ellen Street and approximately 24m to the rear of No.16 Ellen Street. Given the topography of the site any the spatial separation the proposal can be designed to provide opportunities to maintain privacy between dwellings. Issues relating to privacy will be assessed in detail with the future application for the detailed design of the dwelling.

In summary, having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011, WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot	R2 Low Density Residential zone	Lots 1 and 2 both comply with the	(a) Min Width

<b>requirements</b>	<p>requirements:</p> <p>Proposed new allotments:</p> <p>a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m<sup>2</sup></p>	<p>minimum width, depth and building area.</p> <p>Lot 3 (2 Wyadra Ave) has a dimension of wide 30.7m x depth 23.4m to the north and 12.1m to the south.</p>	<p>- Yes (b) Min Depth - <b>No</b> - <b>to lot 3</b> (c) Min building area - Yes</p>
<b>Access</b>	<p>Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.</p> <p>Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.</p> <p>Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.</p> <p>Driveways in excess of 200 metres will not be allowed for residential development.</p> <p>Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.</p> <p>Passing bays should have regard to sight conditions and minimise vehicular conflict.</p> <p>Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay.</p>	<p>It is noted that the accessway to 2 Wyadra Avenue approved under DA2015/1123 has been constructed which has activated this consent.</p>	<p>Yes</p>



	<p>Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.</p> <p>Width of accessways are to be as follows:</p> <table><tr><th>Number of lots to be serviced</th><th>Width of clear constructed accessway (m)</th></tr><tr><td>1 - 5</td><td>3.5</td></tr><tr><td>6 - 10</td><td>5.0</td></tr><tr><td>in excess of 10</td><td>Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)</td></tr></table> <p>Provision of services in rights of carriageway are as follows:</p> <table><tr><th>Number of lots to be serviced</th><th>Additional width to be provided in Right of Carriageway (m)</th></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>	Number of lots to be serviced	Width of clear constructed accessway (m)	1 - 5	3.5	6 - 10	5.0	in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)	Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)	Up to 3 lots	0.5	4 or more lots	1.0		
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Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)																
Up to 3 lots	0.5																
4 or more lots	1.0																
<b>Design and construction</b>	<p>All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban</p>	<p>Subject to conditions the design of the proposed parking platform can comply with the required design and construction standards. The details design and assessment of the platform will be subject to a future DA.</p>	<p>Yes</p>														

	<p>Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards.</p> <p>Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.</p>		
<b>Drainage</b>	<p>Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.</p>	<p>The proposal was referred to Council's Development Engineers who raised no objections, subject to conditions.</p>	Yes
<b>Restrictions</b>	<p>Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.</p>	<p>The applicant is required to create an easement for services and drainage. However, it is not considered necessary to require by a positive covenant relating to the building envelope by way of a planning condition, refer to discussion on this issue elsewhere in this report.</p>	Yes
<b>Environmentally constrained land</b>	<p>In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment.</p> <p>Where possible, lot boundaries should utilise natural land</p>	<p>The lot boundary and siting of the dwelling has taken into account the topography of the site, in particular, the large rock shelf. The footprint of the new dwelling is indicated to be sited away from the escarpment of the rock shelf</p>	Yes

	features such as creeks, escarpments and rock outcrops.		
<b>Bushfire</b>	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	The site is not mapped as being at risk from bushfire	N/A

### Description of non-compliance

The proposal complies with all aspects of the control with the exception of the minimum lot depth to lot 3. As discussed elsewhere in this report the battle axe lot was approved under DA2015/1123, the subject DA seeks to increase the size of the lot, refer to plan below.

### Merit consideration

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

- *To regulate the density of development.*

#### Comment:

The proposal will result in a boundary realignment where all three (3) lots comply with the minimum lot size. Despite the variation in the minimum depth the lot 3, (2 Wyadra Avenue), the lot has a width which is in excess of the DCP requirements and it is considered that the dimensions and size of the lot are appropriate to regulate the density of the future dwelling. The concept plans demonstrates that a dwelling can be accommodated on the site that generally complies with the built form controls, provides suitable access and drainage while addressing the environmental constraints of the site.

- *To limit the impact of new development and to protect the natural landscape and topography.*

#### Comment:

The proposed subdivision is designed to limit the impact on the natural area, the rock crop and escarpment, at the front (eastern portion) of 2 Wyadra Avenue. The concept plans demonstrate that the dwelling will be located on the upper, flatter part of the site, helping to minimise impacts on the natural landscape and topography.

- *To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.*

#### Comment:

Lot 2 Wyadra Avenue allows for sufficient landscaping and private open space and subject to conditions the lot can provide suitable drainage, utility service and vehicular access. The breach with the minimum lot depth will not unreasonably impact on the ability of the development meeting objective 3 of the control.

- *To maximise and protect solar access for each dwelling.*

Comment:

The indicative envelope generally complies with the built form controls relating to height, setbacks and envelope and the siting and massing of the envelope will maximise solar access to the future new dwelling while minimising impacts on solar access to existing dwellings. The impact of shadowing will be assessed in detail when the DA is lodged for the new dwelling at No. 2 Wyadra Avenue.

- *To maximise the use of existing infrastructure.*

Comment:

The access road to No. 2 Wyadra Avenue has already been constructed and condition will ensure that the required infrastructure will be provided for the new lot.

- *To protect the amenity of adjoining properties.*

Comment:

The proposed sub-division itself does not result in any unreasonable impacts to neighbours. Amenity impacts can only be fully assessed in detail when the application for the future dwelling is submitted. The future DA for the detailed design of the dwelling will be required to demonstrate compliance with the relevant amenity controls in the DCP. Notwithstanding this, sufficient information has been provided in support of the subject DA for subdivision, including an amended envelope, that demonstrates that the amenity of adjoining properties will not be unreasonably compromised. Issues relating to the protection of residential amenity will be subject to further considered as part of the assessment of any future development application for the detailed design of the dwelling.

In response to the request for conditions to be imposed relating to the materials and colour of the roof, roof top plant and an acoustic assessment of the use of the car port these issues will be considered under the future DA and it is not reasonable or necessary to include conditions relating to these factors in the determination of the subject DA for sub-division.

- *To minimise the risk from potential hazards including bushfires, land slip and flooding.*

Comment:

The site is mapped as being within a landslip area. A geotechnical report will be required to be submitted with any future DA for a new dwelling at 2 Wyadra Avenue.

In summary, the performances of the the proposal against the controls has demonstrates that the sub-division and re-alignment of boundaries is suitable. The non-compliance with the minimum depth to 2 Wyadra Avenue will not result in in related non-compliances with the other provisions or objectives of the control and will not result in unreasonable impacts to neighbouring properties. Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011, WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal demonstrates that the subdivision is suitable and is supported, in this particular circumstance.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **D1 Landscaped Open Space and Bushland Setting**

### Description of non-compliance

The proposal provides a compliant amount of open space to No 2 Wyadra Avenue and 16 Ellen Street. The boundary adjustment will reduce the size of 14 Ellen Street to 495sqm including the right of way (450sqm excluding the ROW) as such a total landscape area of 180sqm is required. The site provides for a 129.6sqm (28.8%) 143.6sqm (31.9%) including the deck and paved areas.

### Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

#### Comment:

There will be no loss to the existing planting along the street frontage of No. 14 Ellen Street. The boundary adjustment relates to the rear of the site.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

#### Comment:

The boundary adjustment and breach of landscape open space to No. 14 Ellen Street will not result in any unreasonable impacts on indigenous vegetation, topographical features or habitat for wildlife.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

#### Comment:

The boundary adjustment will not change existing areas of planting. The area of landscape open space that will be lost as a result of the boundary adjustment relates to the escarpment of the rock outcrop which has presents limited opportunities for planting

- *To enhance privacy between buildings.*

#### Comment:

The boundary adjustment to No. 14 Ellen Street will not impact on privacy between buildings. Due to the land form the future dwelling at No. 2 Wyadra Avenue will overlook the roofs of the properties to the east.



- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The boundary adjustment will not change existing areas of planting. The area of landscape open space that will be lost as a result of the boundary adjustment relates to the escarpment of the rock outcrop which has presents limited opportunities for recreational use.

- *To provide space for service functions, including clothes drying.*

Comment:

Adequate space will be retained to No. 14 Ellen Street for service functions including clothes drying.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

The boundary adjustment will not unreasonably impact on water management to No. 14 Ellen Street.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **D7 Views**

### Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To allow for the reasonable sharing of views.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

#### **1. Nature of the views affected**

*"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".*

Comment to Principle 1:

View will be affected from the following properties:

- 25 Loch Street,
- 23 Loch Street and
- 19 Loch Street.

#### *No 23 and 25 Loch Street*

Views of the ocean, Curl Curl Beach and the land water interface and South Curl Curl rock pool will be affected by the proposal.

#### *19 Loch Street*

View of the ocean, Curl Curl Beach, Curl Curl Surf Life Savers Club (LSC) and the land water interface will be affected by the proposal.

## **2. What part of the affected property are the views obtained**

*"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".*

### Comment to Principle 2:

The views are obtained from from both a standing and siting position from the rear of No 19, No. 23 and No. 25 Loch Street looking to the east. The greatest impact is from the lower ground floor deck of No 23 Loch Street from a sitting position. Refer to discussion on each property below.

#### *No. 25 Loch Street*

Expansive views of the ocean, Curl Curl Beach, the land and water interface and Curl Curl rock pool are obtained over the rear boundary of the subject site. The views are obtained from a standing and seated position from the lower ground level rear yard and from a small landing / deck adjacent to the rear of the dwelling. Views are also obtained from the the rear facing living room and kitchen windows primarily from a standing position.

#### *No. 23 Loch Street*

The views of the ocean, Curl Curl Beach, the land and water interface and Curl Curl rock pool are obtained over the rear boundary. The primary views are obtained from both a standing and siting position on the upper level deck and the open plan kitchen, living and dining room. Views are also obtained from a standing and siting position from the rear lower level deck which adjoins an (east) facing bedroom and the rear yard / pool area and cabana. It is noted that the view of the land (sand) water interface is limited from the rear lower level deck and bedroom.

#### *No 19 Loch Street*

The view of the ocean, Curl Curl Beach, the land and water interface and Curl Curl rock pool are obtained over the rear boundary. The primary are those directly to the east observed from both a standing and siting position on the upper level deck and the open plan kitchen, living and dining room and the lower deck and pool area. Secondary views across the side boundary of

the subject site are also of the ocean, Curl Curl Beach and the Surf Life Club.

### 3. Extent of impact

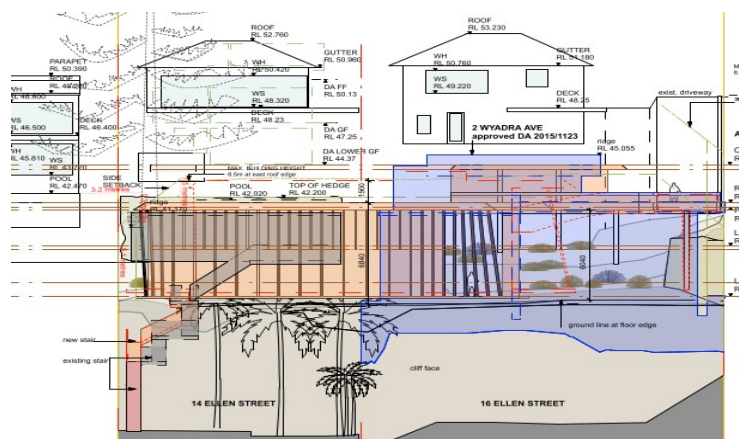
*"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".*

#### Comment to Principle 3:

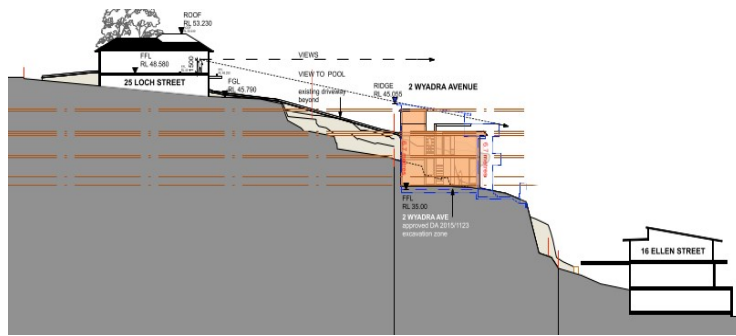
##### *No 25 Loch Street*

The amended envelope increases in height of the indicative envelope by between 0.5m - 1.1m to accommodate a car port RL 41.40 (located on the northern portion of the site). It is noted that the DA2015/1123 approved a two storey dwelling on the northern portion of the subject site which was had an approved height 0.7m higher than the indicative envelope on the northern portion of the site which relates to the car port. Furthermore, the footprint and depth of the car port is substantially smaller compared to the footprint / depth of the approved house. This reduction in the projection of the envelope to the east will reduce the view impact to No. 25 Loch Street from the dwelling already approved to which the consent has been activated with the construction of the driveway. The detailed design of the car port will be subject to a future DA for the dwelling

In summary there will be some moderate view loss from the the rear deck and garden of the land (sand) water interface of Curl Curl Beach, however, with the reduction in the depth of the envelope the view to the south curl curl ocean pool and the ocean beyond will still be visible and given the history of the site the view loss from the amended envelope is not considered to be unreasonable. Refer to the elevation and photos below.



Elevation showing the proposed envelope relative to the location of windows to No. 23 and 25 Loch Street.



Section showing the car port envelope and the view line from the windows of No 25 Loch Street



View from rear deck and garden

The proposal will result in a minor loss of view from the living room window from a sitting position, however, there will be limited impacts on the view observed from both the living room and kitchen from a standing position.



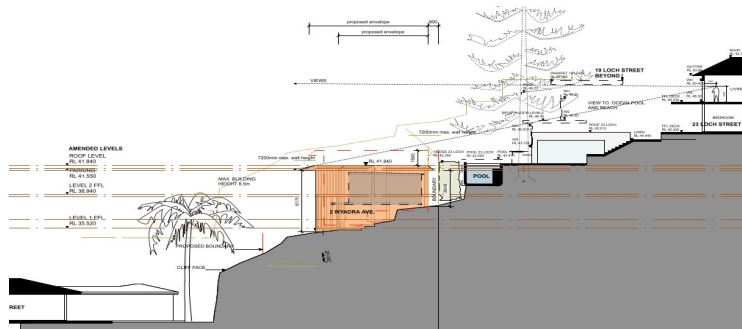
View from Kitchen



View from living room

### No 23 Loch Street

The amended envelope reduces the height of the indicative dwelling, located within the southern portion of the site by 1.5m (RL41.8). As a result, it is considered that there will be no view loss of the interface between the land (sand) and ocean of Curl Curl Beach from the upper floor deck and the upper floor open plan living, kitchen and dining room, refer to section and photos below.



Section showing the view line from the deck and windows of No 23 Loch Street.



View from upper floor deck looking east over the subject site.





View from open plan living, dining and kitchen looking east

There will be some loss of view from the rear lower deck which adjoins a bedroom. However, the extent of this view loss has been reduced with the amended proposal and the view of the Curl Curl ocean pool and the ocean beyond will be retained.



View from lower deck

### No 19 Loch Street

#### *Lower level deck, pool and living room*

The proposal will impact of the north facing view (both standing and siting) looking across the side of the subject site from the lower level deck . The view lost will include the view of the Curl Curl Surf Life Club and part of the beach. There will be some loss of the same view but to a lesser extent standing within the living area (play room / gym / bar) close to the bi-fold doors. Although the amended envelope is relocated the dwelling closer to the southern boundary, on balance, the 1.5m reduction in the height of the envelope and the reduction in the projecting of the footprint to the east will reduce the extent of the view loss from the lower level deck. On balance the view loss to No. 19 Loch Street has been assessed as minor.





View from lower level deck which adjoins the pool area.

There will be minimal impact on view loss from the upper floor living area and deck. The view of the proposed envelope would replace the view of the roof of the existing gazebo structure to the rear of No. 14 Ellen Street.

#### 4. Reasonableness of the proposal that is causing the impact

*“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”*

#### Comment to Principle 4:

The subject application is for subdivision and an adjustment of lot boundaries to include the creation of an amended larger lot (lot 3) to accommodate a future two storey dwelling. The application is supported with an indicative building envelope which demonstrates that the proposal generally complies with the built form controls including height, wall height, envelope and front and side setbacks. The minor non-compliance with the rear setback will not in itself result in any issues with respect to view sharing.

The envelope has been agreed to through mediation and has been assessed as acceptable in terms of compliance with the relevant planning controls to ensure that there is no unreasonable environmental impacts or impacts on neighbouring amenity in particular view sharing. The detailed design of the dwelling will be considered under a future application for the dwelling

#### Assessment against the objectives of Clause D7 Views

- *To encourage innovative design solutions to improve the urban environment.*

#### Comment:

The building envelope will not result in unreasonable impacts in terms of view sharing. The detailed design of the dwelling will be subject to a separate application.

- *To ensure existing canopy trees have priority over views.*

Comment:

Canopy trees, including the mature Norfolk Pine tree to the west of the subject site will be retained and will be observed from Curl Curl beach and neighbouring properties in the context of the future dwelling.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **D8 Privacy**

The DA seeks consent for subdivision and the detail design of the future dwelling at No 2 Wyadra Avenue including the location of windows and private open space will be considered as part of the merit assessment of any future DA for the dwelling.

Despite this the concept plans demonstrate a future dwelling can be accommodated on the site without creating unreasonable impacts on neighbours in terms of loss of privacy. The indicative details demonstrate that there are no windows on the rear (west elevation) of the future dwelling and a privacy screen will be installed along the western and southern edge of the car port.

The amended envelope relocates the future dwelling closer to the southern boundary. Issues relating to the detailed design of the southern elevation such as high level windows or windows with external fixed privacy screens attached will be considered as part of the assessment of any DA for the dwelling. It is noted that the footprint of the dwelling sits forward of the pool and deck area to No 19 Loch Street to prevent direct overlooking. The dwelling sits adjacent to the rear garden of No. 12 Ellen Street and the south-eastern corner of the future dwelling is positioned 24m from the deck adjoining the rear of No. 12 Ellen Street, as such it is unlikely that there will be any loss of privacy to this property.

The proposed new dwelling is sited primarily to the rear of No. 14 Ellen Street and has a 4m - 5.5m setback from the proposed boundary. Due to the level difference between the existing dwelling at No. 14 Ellen Street and the proposed dwelling it is unlikely that there will be any loss of privacy as the east facing windows will overlook the roof of No. 14 Ellen Street.

### **E2 Prescribed Vegetation**

The DA seeks consent for subdivision and will not therefore include any proposal to remove vegetation. Issues relating to the removal of vegetation will be assessed as part of any future DA for a new dwelling .

It is also noted that the site has been altered with the construction of the existing gazebo and deck to the rear of No. 14 Ellen Street. Issues relating to the removal of vegetation to allow for the approval of the house on the northern part of 2 Wyadra Avenue were also considered under DA2015/1123.

### **E5 Native Vegetation**

The site is mapped as having native vegetation value. Clause E5 requires:

*1. For modification of native vegetation where the area of land supporting the vegetation to be modified is greater than 100m<sup>2</sup> or the land supporting the vegetation to be modified forms part of an allotment where vegetation has been modified in the last five years:*

- i. The applicant must demonstrate that the objectives have been achieved through a Flora and Fauna Assessment prepared in accordance with Council guidelines; and*
- ii. The applicant must demonstrate that the objectives have been achieved through a Biodiversity Management Plan prepared in accordance with Council guidelines that will protect native vegetation on the subject property.*

*2. For modification of native vegetation in all other cases, the applicant must demonstrate that the objectives have been achieved.*

#### Comment

The subject application is for subdivision and lot boundary adjustment. No work is proposed under the subject DA, however, it is noted that the indicative footprint of the future dwelling is similar to the footprint of the dwelling approved under DA2015/1123 combined with the existing detached structure to the rear of No. 14 Ellen Street. Any future DA for the construction of the dwelling will require the submission of a Flora and Fauna Assessment and a Biodiversity Management Plan to address Clause E5 of the WDCP.

### **E6 Retaining unique environmental features**

Clause E6 requires

- 1. Development is to be designed to address any distinctive environmental features of the site and on adjoining nearby land.*
- 2. Development should respond to these features through location of structures, outlook, design and materials.*

#### Comment

The revised envelop relocates the footprint of the future dwelling away from the escarpment of the rock outcrop in order to minimise the impact on the unique environmental feature of the site. Any DA of for the construction of the dwelling will be required to provide additional information to address clause E6.

### **E10 Landslip Risk**

The site is mapped as being of landslip risk B and C. It is noted that the amended envelope includes excavation to a depth of 2.9m which is 0.7m less than the excavation approved under DA2015/1123. No work is being proposed as part of the subject subdivision DA and a geotechnical report and a hydrological assessment of stormwater discharge and subsurface flow conditions will be required to be submitted with any future DA for the dwelling at 2 Wyadra Avenue.

### **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 2019**

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;
- Warringah Local Environment Plan;
- Warringah 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, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

The proposal complies with the minimum lot size and conditions are recommended to ensure compliance with sub-division controls relating to services, drainage and parking.

The building envelope has been amended following mediation and demonstrates that a dwelling can be accommodated on the site without resulting in unreasonable impacts on neighboring residential amenity, in particular view sharing. The amended envelope reduced the height of the dwelling by 1.5m to sit up to 3.2m lower than the height of the approved dwelling. The indicative envelope generally complies with the built form controls including height, wall height, front and side setbacks, side envelope and landscape open space. The minor breach in the lot depth and rear set back will not result in unreasonable amenity impacts. The breach in the open space requirement to No. 16 Ellen Street has been assessed as acceptable given that it will not compromise the amenity of the dwelling or result in unreasonable impacts to other properties or the streetscape.

The detailed design of the dwelling will be subject to a separate application which will make a full assessment of amenity impacts and potential impacts on the natural environment including the significant rock outcrop.

The issues raised in the submissions have been address with the amended plans and will be fully considered as part of any development application for the detailed design of the dwelling at No. 2 Wyadra Avenue.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/0147 for Consolidation of 3 lots into one lot and resubdivision into 3 Torrens Title lots on land at Lot 10 DP 14040, 14 Ellen Street, CURL CURL, Lot 101 DP 1224100, 16 Ellen Street, CURL CURL, Lot 102 DP 1224100, 2 Wyadra Avenue, FRESHWATER, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

##### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA1 Amend 1 Drawing 01 Issue 4 Survey Future Boundaries	22 September 2020	Peter Stutchbury Architecture
DA1 Amend 1 Drawing 200 Issue 4 East / West Elevation	22 September 2020	Peter Stutchbury Architecture
DA1 Amend 1 Drawing 300 Issue 2 Section 1 Driveway	22 September 2020	Peter Stutchbury Architecture
DA1 Amend 1 Drawing 301 Issue 4 Section 2 Mid cross	22 September 2020	Peter Stutchbury Architecture
DA1 Amend 1 Drawing 302 Issue 3 Section 3 - South Cross	22 September 2020	Peter Stutchbury Architecture
DA1 Amend 1 Drawing 303 Issue 3 Section 3 - South Cross	22 September 2020	Peter Stutchbury Architecture

#### **Reports / Documentation – All recommendations and requirements contained within:**

<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
TTW Driveway Traffic Assessment Ref 201459 TAAA	4 September 2020	Taylor Thomson Whitting (TTW)

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.



Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

## 2. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

### 3. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 8.00 am to 1.00 pm inclusive on Saturday,
  - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2008
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater

management system.

- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

## **FEES / CHARGES / CONTRIBUTIONS**

### **4. Security Bond**

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

Reason: To ensure adequate protection of Council's infrastructure.

## **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE SUBDIVISION WORKS CERTIFICATE**

### **8. Subdivision Works Certificate**

A Subdivision Works Certificate is to be approved by Certifying Authority for the provision of engineering works.

Engineering plans for the subdivision works within this development consent are to be submitted to the Certifying Authority for approval under Section 6.13 of the Environmental Planning and Assessment Act 1979.

Civil Engineering plans for the subdivision works are to be designed in accordance with the Council's specification for engineering works – AUS-SPEC #1. The plans shall be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering. The design must include the following information:

1. Structural details of the elevated turning facility featuring a turntable as detailed in the TTW dated 4th September 2020.
2. Stormwater drainage plans detailing the provision of all stormwater from proposed all proposed future lots in accordance with Councils water management policy.

The Subdivision Works Certificate must be supported by engineering plans, calculations, specification or any certification relied upon.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specifications.

**9. Utilities Services**

Prior to the issue of the Subdivision Works Certificate, the Applicant is to obtain the following:

- (a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
- (b) Evidence that notification has been received from a utility authority that, requirements for the development can be provided.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Subdivision Works Certificate.

Reason: To ensure that services have been provided as required by this Consent.

**10. Pre-Commencement Dilapidation Report**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifying Authority prior to the issue of the any Subdivision Works Certificate and the commencement of any works including demolition.

Reason: Protection of Council's Infrastructure during construction.

**11. Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Subdivision Works Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

## **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

**5. Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Specify that, due to the proximity of the site to Harbord Public School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays)
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane



The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

**6. Vehicle Mechanical Turntable**

The applicant is to submit information on the proposed vehicular turntable, operation details, and instructions to visitors on using the device, maintenance plan, and contingency plan during a malfunction to the Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure the turntable is as per the approval and operates in accordance with the intent of the approval.

**7. Elevated Parking Platform Barrier System.**

The applicant is to submit an engineering report to the Certifying Authority demonstrating that the Elevated Parking Platform has a suitably engineered, compliant barrier system to contain the largest vehicle that will use the structure. This is to meet the relevant structure requirements of AS/NZS 1170.1 and allow the driver of a vehicle to see the barrier clearly from the reversing vehicle.

Reason: To ensure the safety of the public, drivers and adjoining property occupants

## **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**12. Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

**13. Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

## **CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

**14. Section 88E instrument relating to turntable**

The applicant is to include a Section 88E instrument on the title permitting Council to provide direction as to the repair/maintenance of the approved turntable.

Reason: To ensure the mechanical services are maintained in a serviceable state at all times.

## **CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE**

### **15. Provision of Services for Subdivision**

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

### **16. Easement for Drainage**

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

### **17. Easement for Services**

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

### **18. Release of Subdivision Certificate**

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

### **19. Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be

submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.