

STATEMENT OF ENVIRONMENTAL EFFECTS

**FOR PROPOSED TORRENS TITLE SUBDIVISION OF ONE LOT INTO
TWO LOTS, MINOR DEMOLITION AND CONSTRUCTION OF A NEW
CAR STAND AREA, DRIVEWAY AND CROSSING**

LOCATED AT

45 OXFORD FALLS ROAD, BEACON HILL

FOR

JIRI AND MARCELA ALBRECHT

**Prepared
August 2020**

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1.0 Introduction

This Statement of Environmental Effects accompanies details prepared by Michal Korecky, Drawing No. 18080, dated 24 December 2019 for the Torrens Title subdivision of one lot into two lots and construction of a new car stand area with driveway and crossing on land at **No. 45 Oxford Falls Road, Beacon Hill**. The works also include the demolition of a rear addition to the existing dwelling.

This Statement describes the subject site and the surrounding area, together with the relevant planning controls and policies relating to the site and the type of development proposed. As a result of this assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

A previous Development Application (DA2019/0843) for a similar two lot subdivision was withdrawn in October 2019 following concerns raised by Council in the assessment of the application. The principal issue was the adequacy of the setback between the existing dwelling and the future building platform within the proposed allotment.

The current application has been revised to provide for a demolition of an existing rear extension to the existing dwelling which is to be retained. As a result of the removal of this element from the existing dwelling, the proposed existing and future dwelling will be separated by a setback of 12.212 m, which is considered to provide for an appropriate setback that retains the amenity and privacy for each dwelling.

In preparation of this document, consideration has been given to the following:

- *The Environmental Planning and Assessment Act, 1979 as amended*
- *The Environmental Planning and Assessment Regulation 2000*
- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *Warringah Local Environmental Plan 2011*
- *Warringah Development Control Plan*

2.0 Property Description

The subject allotment is described as **45 Oxford Falls Road, Beacon Hill** being Lot 1 within Deposited Plan 206629 and is zoned R2 Low Density Residential within the provisions of the Warringah Local Environmental Plan 2011.

The site is noted as Land Slip Risk Area A & B and involved excavation work to provide for a new car stand area adjacent to the Oxford fall Road frontage. Accordingly, a Geotechnical Investigation has been prepared by White Geotechnical Group, Reference No. J2011A, dated 22 July 2019, and accompanies this submission. This will be discussed in further detail within this report.

The site is noted as Bushfire Prone Land. A Bushfire Risk Assessment has been prepared by Planning or Bushfire Protection, Reference No. 1299, dated 9 July 2019 and accompanies this submission.

The site is identified on Council's Stormwater Map and is within 2m of Council's stormwater pits and conduits. The proposal is considered in the Overland Flow Assessment prepared by Stellen Civil Engineering, dated 27 July 2019 and this will be discussed in further detail within this report.

The site is not noted as being affected by any other hazards.

3.0 Site Description

The subject site is located on the southern side of Oxford Falls Road. The lot is rectangular in shape, with a width of 17.34m and the western and eastern side boundaries measuring 64.975m and 64.96m respectively. The site area is 1126m².

The site has a fall of approximately 12.6m to the front, northern boundary.

Vehicular access is currently available to the site via a right of carriageway from Dareen Street to an existing dwelling with an attached and detached garage.

The details of the subject site are indicated on the survey plan prepared by Detailed Surveys, Reference No. 087/17, dated 20 August 2020, which accompanies the DA submission.



Fig 1: Location of Subject Site
(Source: Google Maps)



Fig 2: View of subject site, looking south from Oxford Falls Road/Iris Street intersection



Fig 3: View of subject site and location of proposed car stand area, looking south-west from Oxford Falls Road/Iris Street intersection



Fig 4: View of neighbouring properties to the east, including similar car stand at No 43 Oxford Falls Road, looking south



Fig 5: View of streetscape to the east of the site, looking south-east

4.0 The Surrounding Environment

The general vicinity of the site is characterised by a mix of residential dwellings of generally one or two storeys and of a variety of architectural styles. The varying age of development in the area has resulted in a mix of materials and finishes, with the development in the area generally presenting a consistent setback to the public domain.

The surrounding properties comprise a range of original style dwellings with an emergence of modern dwellings and additions. Surrounding development comprises a mix of single and two storey dwellings.

The dwellings within this area are characterised by a mix of gentle and steeply sloping topography. Local views are enjoyed by dwellings along Oxford Falls Road.

A new roundabout has been constructed at the intersection of Iris Street and Oxford falls Road, which allows for more convenient and safe access for vehicle movement in the locality. Access from the roundabout to the proposed car space will be available.

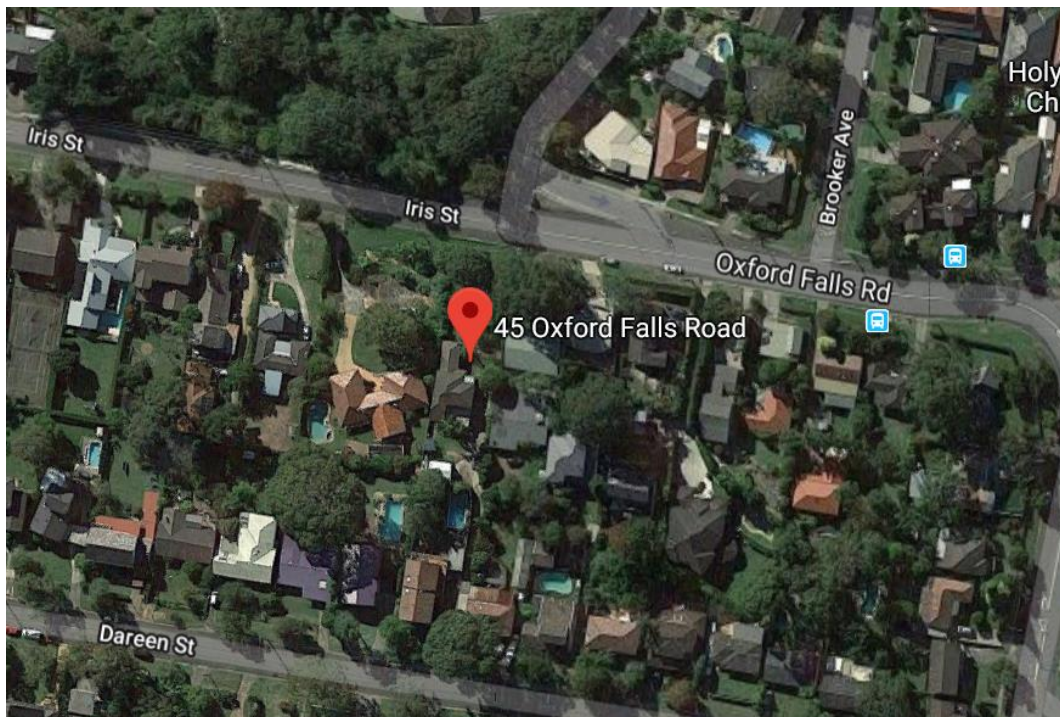


Fig 6: Aerial view of locality
(Source: Google Maps)

5.0 Proposed Development

The proposal seeks consent for the Torrens Title subdivision of one lot into two lots & and construction of a new car stand area, driveway and crossing.

The existing dwelling will be retained within Proposed Lot 1. An existing single story extension to the northern side of the current dwelling will be demolished in order to provide for an increased separation between the future building footprint and the existing dwelling. As a result of the demolition of the extension, the separation between the existing dwelling and the proposed dwelling will be 12.545m.

The proposed new car stand area, driveway and crossing is to be constructed within the north-eastern portion of the site, with access to be provided from Oxford Falls Road. Pedestrian access stairs from the street and car stand area to the dwelling is also proposed.

A 900mm stormwater easement is to be constructed along the eastern side of the proposed new Lot 2.

The proposed subdivision of Lot 1 will result in allotments which have been defined as Proposed Lots 1 and 2, with the following indices:

Site Area (Lot 1):	585m ² (existing right of carriage way from Dareen St to be retained for access)
Site Area (Lot 2):	541m ² (access via Oxford Falls Rd)

Proposed Lot 2 will eventually contain a new dwelling, which will form part of future development application. An indicative building envelope has been indicated on the plans.

Proposed Lot 1 will maintain a minimum of 40% of the site as soft landscaped area.

Proposed Lot 2 will, exclusive of the proposed building footprint and carport, maintain a landscaped open space of 52.2%.

6.0 Zoning and Development Controls

6.1 State Environmental Planning Policy No. 55 – Remediation of Land

SEPP 55 – Remediation of Land and in particular Clause 7(1)(a) suggests that a consent authority must not grant consent to the carrying out of any development on land unless it has considered whether the land is contaminated.

Given the history of residential use of the land, the site is not considered to be subject to contamination and further investigation is not required at this stage.

6.2 Warringah Local Environmental Plan 2011

Under the provisions of the WLEP 2011 the development of and use of the land for residential purposes is consistent with the objectives of the R2 Low Density Residential Zone, which are noted as:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*



Fig 7: Zoning map extract (Source: WLEP 2011)

It is considered that the proposed Torrens Title subdivision of one lot into two is consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the subdivision pattern within the locality.

- The proposed lot size and potential development area respects the scale and form of other new development in the vicinity and therefore complements the locality.
- The proposal maximises the landscaped area outside of the future building platforms whilst providing safe and functional vehicular access and recreational areas.
- The setbacks of the future development platforms are compatible with the existing surrounding development.
- The future developable areas will not have an adverse impact on the long distance views for the neighbouring properties.

Clause 2.6 – Subdivision – Consent requirements

The requirement of WLEP 2011 requires the prior consent of Council for any subdivision. Accordingly, this application seeks consent in accordance with this Clause.

Clause 4.1 – Minimum subdivision lot size

In accordance with the Lot Size Map, the minimum allotment size in this locality is 600m². The proposed lots provide the following areas:

Site Area (Lot 1):	585m ²
Site Area (Lot 2):	541m ²

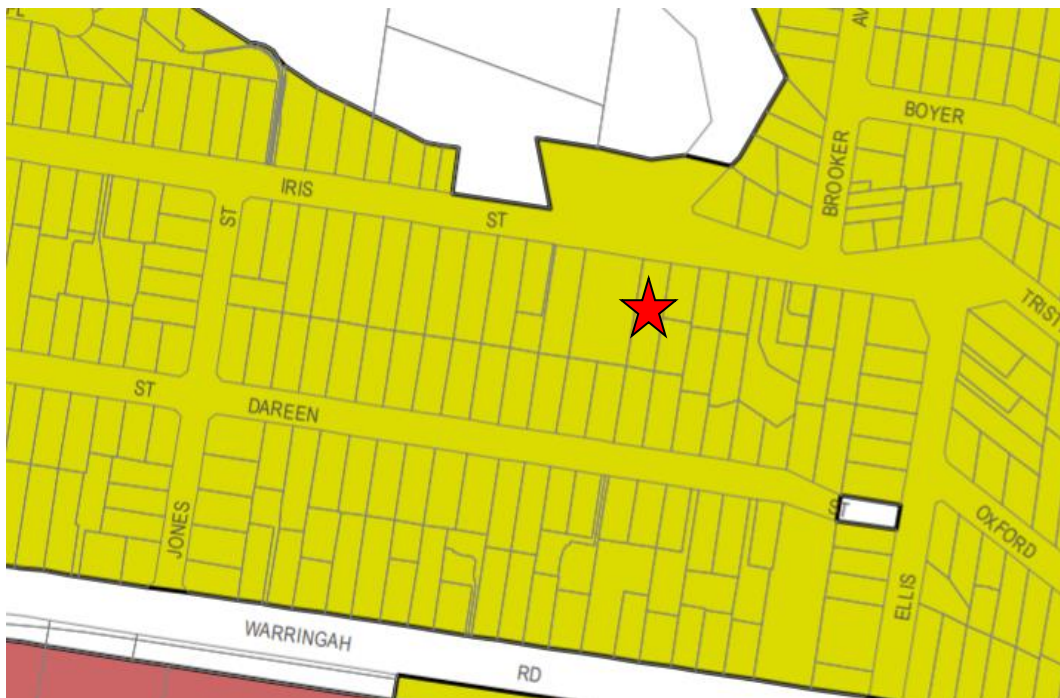


Fig 8: Lot size map (Source: WLEP 2011)

Each lot will present a noncompliance with the required minimum lot size. Accordingly, the proposal is accompanied by a submission pursuant to Clause 4.6 in support of the proposed variations.

Clause 6.2 – Earthworks

The application seeks consent for excavation to provide for a car stand area at the Oxford falls Road frontage, together with a driveway and crossing. The infrastructure works to accommodate for the car stand area, driveway and crossing and stormwater easement drainage works will not necessitate substantial disturbance to the existing landform.

Due to the sloping nature of the site, a Geotechnical Investigation has been prepared by White Geotechnical Group, Reference No. J2011A, dated 22 July 2019, and accompanies this submission.

All works will be carried out under the supervision of the Consulting Structural & Geotechnical Engineers.

Clause 6.4 – Development on Sloping Land

The site is noted as being within Landslip Area A and B. The proposal seeks to provide for the Torrens Title subdivision of the existing allotment into two, together with the construction of a car stand area, driveway and crossing and stormwater easement drainage works. Accordingly, a Geotechnical Investigation has been prepared by White Geotechnical Group, Reference No. J2011A, dated 22 July 2019, and accompanies this submission. The report provides recommendations in relation to geotechnical inspections to be observed during the construction works. The proposal therefore satisfies the provisions of this clause.

It is submitted that the proposed subdivision of one lot into two would comply with the WLEP 2011 subdivision controls.

6.3 Warringah Development Control Plan

The primary built form controls relating to the setback height, site coverage etc. for built structures will be further assessed in relation to the future development applications for new buildings on the land.

The relevant numerical and performance based controls under WDCP are discussed below.

Standard	Required	Compliance/ Proposed
B5 – Side Boundary setback	Objectives <ul style="list-style-type: none"> • To provide opportunities for deep soil landscape areas • To ensure that development does not become visually dominant • To ensure that the scale and bulk of buildings is minimised • To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained • To provide reasonable sharing of views to and from public and private properties 	<p>Development is subject to a minimum side setback of 900mm. The proposed new car stand area and driveway is well set back from the western side boundary of the site, and stands 900mm from the eastern side boundary and therefore complies with this control.</p>
B7 – Front Boundary setback	Objectives <ul style="list-style-type: none"> • To create a sense of openness • To maintain the visual continuity and pattern of buildings and landscape elements • To protect and enhance the visual quality of streetscapes and public spaces • To achieve reasonable view sharing 	<p>The control requires a 6.5m front setback.</p> <p>The future dwelling within proposed Lot 2 will exceed Council's minimum 6.5 m setback (Minimum setback of 7.99m proposed).</p> <p>The proposed new car stand area will stand a minimum of 2.186m from the front boundary.</p> <p>Due to the steeply sloping topography of the site, there is no alternative location available.</p> <p>The proposed excavated car stand area maintains a modest single storey scale to Oxford Falls Road, which is in keeping with the bulk and</p>

		<p>scale of surrounding development.</p> <p>The proposed new works will not result in any unreasonable impacts for neighbouring properties in terms of view loss, amenity impacts or overshadowing. Accordingly, the siting of the proposed car stand area is considered worthy of support on merit.</p> <p>Due to the sloping topography of the site, it is not uncommon to have parking structures located within the front setback. The car stand area in the adjoining property at No. 43 Oxford Falls Road comprises a similar form and location within the front setback.</p> <p>The proposed car stand area maintains a sense of openness, and the modest scale and low profile roof form will ensure that the visual impact of the structure is minimised. The proposed car stand area will not result in any loss of views for neighbouring properties.</p> <p>Notwithstanding the variation to the front setback control, the siting of the car stand area is in keeping with the desired outcomes of this clause and the proposal is worthy of support on merit.</p>
B9 – Rear Boundary setback	<p>Objectives</p> <ul style="list-style-type: none"> • To ensure opportunities for deep soil landscape areas are maintained • To create a sense of openness in rear yards 	<p>Development is subject to a minimum rear setback of 6m.</p> <p>The proposed new car stand is sited within the front boundary area and is</p>

	<ul style="list-style-type: none"> • To preserve the amenity of adjacent land, particularly relating to privacy between buildings, rear gardens and landscape elements • To provide opportunities to maintain privacy between dwellings 	<p>therefore not subject to the rear setback control.</p> <p>Due to the proposed demolition of an existing single storey extension at the rear of the current dwelling, which is to be retained, a separation of 12.545m will be provided between the dwellings. The separation will provide for an appropriate area for landscaping and the protection of the amenity and privacy of each dwelling.</p> <p>The proposed new dividing boundary between the lots will stand 1.333 m from the northern elevation of the current dwelling, after the demolition of the rear extension. The current dwelling enjoys areas to the east and south for private recreation and the proposed minimum setback of 1.333 m will not unreasonably compromise the amenity of the occupants of the existing dwelling.</p> <p>The private open space areas for both allotments will enjoy good solar access and privacy</p> <p>The extent of the separation between the proposed dwelling and its rear boundary (11.212m) will allow for the building occupants to enjoy private open space that can be well screened from the surrounding properties with additional landscaping.</p>
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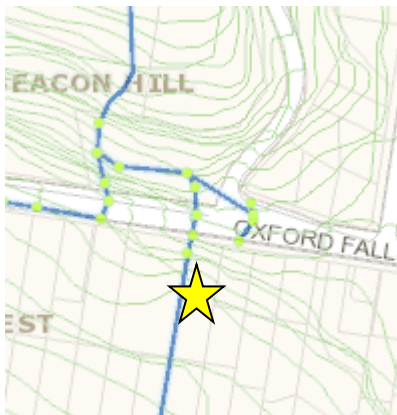
<p>C1 – Subdivision</p>	<p><u>Requirements</u></p> <p>1. R2 Low Density Residential zone requirements:</p> <p>Proposed new allotments:</p> <ul style="list-style-type: none"> a) Min width: 13m b) Min depth: 27 m and c) Min building area: 150m² <p><u>Access</u></p> <p>2. Motor vehicle access to each residential 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><u>Lot 1</u></p> <p>Width – 17.34m Depth – 33.775m Building area – N/A (existing building maintained)</p> <p><u>Lot 2</u></p> <p>Width – 17.34m Depth – 31.20m Building area – >150m²</p> <p>The proposal will comply with the subdivision configuration requirements.</p> <p>The existing driveway (ROW) access from Dareen Street will be retained for access to Lot 1. Access to Lot 2 will be provided via a new driveway and crossing from Oxford Falls Road to a proposed new car stand area.</p> <p>The new access driveway to Lot 2 will be compliant with Council's controls.</p> <p>No passing bays are required as two separate access ways will be provided.</p>
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	<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>Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.</p>	
	<p>Width of accessways* Number of lots to be serviced/ Width of clear constructed accessway (m)*</p> <p>1-5 lots/3.5m</p> <p>6-10 lots/5.0m</p> <p>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)</p>	<p>N/A – The proposed access driveway to Lot 1 will be retained and a new separate access driveway and crossing will provide access to Lot 2.</p>
	<p>*Notes to Table: The accessway width is exclusive of any area for the provision of services to the lots. Clear widths exclude fencing and other obstructions. As the widths specified are for straights, any widening should be exclusive of the widening for curves. The widening for curves should suit the minimum swept path of vehicles in accordance with Australian / New Zealand Standards (at the time of adoption AS/NZS 2890.1:2004 applied).</p>	
	<p>Table: Provision of services in rights of carriageway Number of lots to be serviced/</p>	

	<p>Additional width to be provided in Right of Carriageway (m)*</p> <p>Up to 3 lots/0.5m</p> <p>4 or more lots/1.0m</p> <p>All existing and new roads are to be designed in accordance with Council's Policy requirements:</p> <p><u>Design and construction</u></p> <p>3. 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 Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards. Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.</p> <p><u>Drainage</u></p> <p>4. 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>Noted – will be considered in the any future applications for dwellings.</p> <p>Stormwater from the proposed allotments will be directed to the street gutter in Oxford Falls Road via the proposed new 900mm Stormwater Easement to be located adjacent to the eastern side boundary of Lot 2. Any future applications for construction of a dwelling on the proposed Lot 2 will provide detailed stormwater drainage plans.</p>
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	<p><u>Restrictions</u></p> <p>5. 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><u>Environmentally constrained land</u></p> <p>6. 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 features such as</p>	<p>Noted</p> <p>The site is identified as Area A & B on Council's Land Slip Risk Map. The proposed allotments are capable of accommodating dwelling that minimise the hazard risk. The site is noted as Land Slip Risk Area A & B. Accordingly, a Geotechnical Investigation has been prepared by White Geotechnical Group, Reference No. J2011A, dated 22 July 2019, and accompanies this submission. The report provides recommendations in relation to geotechnical inspections to be observed during the construction works. The proposal therefore satisfies the provisions of this clause.</p> <p>A Bushfire Risk Assessment has been prepared by Planning for Bushfire Protection, Reference No. 1299-R, dated 21 June 2020, and accompanies this submission. Subject to compliance within the recommendations contained within this assessment, the proposal will satisfy the provisions of this clause.</p> <p>The primary rock features within the site will be largely retained, with some</p>
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	creeks, escarpments and rock outcrops.	excavation at the lower (northern) end of the site to accommodate the new car stand area.
C2 – Traffic, Access and Safety	<p>Objectives</p> <p>To minimise:</p> <ul style="list-style-type: none"> a) traffic hazards; b) vehicles queuing on public roads c) the number of vehicle crossings in a street; d) traffic, pedestrian and cyclist conflict; e) interference with public transport facilities; and f) the loss of “on street” kerbside parking. <p>Vehicular crossing to be provided in accordance with Council’s Vehicle Crossing Policy</p>	The proposal will seek to provide a new access driveway and crossing from Oxford Falls Road to proposed Lot 2 in accordance with Council’s controls. The existing access to the site will be retained for access to Lot 1. The works will minimise the impact on on-street parking.
C3 – Parking Facilities	<p>Objectives</p> <ul style="list-style-type: none"> • To provide adequate off street carparking • To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public space • To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces. 	The proposal provides for the construction of a new car stand area within the north-eastern portion of proposed Lot 2. The car stand area will provide space for two car spaces and its modest size and open design will not dominate the streetscape.
C4 – Stormwater	<p>Objectives</p> <ul style="list-style-type: none"> • To ensure the appropriate management of stormwater. • To minimise the quantity of stormwater run-off. • To incorporate Water Sensitive Urban Design techniques and On-Site Stormwater Detention (OSD) Technical Specification into all new developments. • To ensure the peak discharge rate of stormwater flow from new development is no greater than the Permitted Site Discharge (PSD). 	<p>Stormwater from the proposed allotments will be directed to the street gutter in Oxford Falls Road through proposed new 900mm Stormwater easement along the eastern side of Lot 2.</p> <p>Any future applications for construction of a dwelling on the proposed Lot 2 will provide stormwater drainage plans.</p>

	Hydraulic Design to be provided in accordance with Council's Stormwater Drainage Design Guidelines for Minor Developments and Minor Works Specification	
C6 – Building over or adjacent to Constructed Council Drainage Easements	<p>Objectives</p> <ul style="list-style-type: none"> To ensure efficient construction, replacement, maintenance or access for emergency purposes to constructed public drainage systems located within private property. 	<p>The site adjoins a stormwater conduit to the west.</p> <p>The proposal is accompanied by an Overland Flow Assessment prepared by Stellen Civil Engineering, dated 27 July 2020. Subject to compliance with the recommendations within this report, the proposal complies with the provisions of this clause.</p>
D1 – Landscaped Open Space and Bushland Setting	<p>Min 40% required (min 2m in width)</p> <p>Proposed Lot 1 – 234.1m² (min required 234m²)</p> <p>Proposed Lot 2 – 282.7m² (min required 216.4m²)</p>	Each allotment will observed Council's minimum landscaped area of 40%.
E1 – Private Property Tree Management	Arboricultural report to be provided to support development where impacts to trees are presented	<p>The proposed subdivision will not require the removal of any trees or vegetation.</p> <p>Any future development application for the construction of a dwelling in Lot 2 would require the consideration of tree removal.</p>
E2 – Prescribed Vegetation	Not identified on map	N/A
E3 – Threatened species, populations, ecological communities	Not identified on map	N/A
E4 – Wildlife Corridors	Not identified on map	N/A

E5 – Native Vegetation	Identified on map	N/A
E6 – Retaining unique environmental features	Not identified on map	No significant features within site.
E7 – Development on land adjoining public open space	Not identified on map	N/A
E8 – Waterways and Riparian Lands	Not identified on map	N/A
E10 – Landslip Risk	<p>Identified on map as Area A & Area B.</p> <p>Nature of works to excavate >2m requires the submission of a Geotechnical Hazard Assessment.</p>	<p>Accordingly, a Geotechnical Investigation has been prepared by White Geotechnical Group, Reference No. J2011A, dated 22 July 2019, and accompanies this submission.</p> <p>The report provides recommendations in relation to geotechnical inspections to be observed during the construction works. The proposal therefore satisfies the provisions of this clause.</p>
E11 – Flood Prone Land	Not identified on map	N/A

7.0 Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979

7.1 The provisions of any environmental planning instrument

The proposal is subject to the provisions of the Warringah Local Environmental Plan 2011 and the relevant supporting Council policies. It is considered that the provisions of this environmental planning instrument have been satisfactorily addressed within this report and that the proposal achieves compliance with its provisions.

There are no other environmental planning instruments applying to the site.

7.2 Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

There are no draft instruments applying to the land.

7.3 Any development control plan

The development has been designed to comply with the requirements of Warringah Development Control Plan 2011.

The application has been prepared having regard to the requirements of Section B, Section C and Section D of the Warringah DCP.

It is considered that the proposed design respects the aims and objectives of the DCP however we note that the Environmental Planning and Assessment Amendment Act 2012 No 93 (Amendment Act) which received assent on 21 November 2012 commenced on 1 March 2013.

Key amongst the amendments are requirements to interpret DCPs flexibly and to allow reasonable alternative solutions to achieve the objectives of DCP standards.

The new section 3.42 provides that the 'principal purpose' of DCPs is to 'provide guidance' on:-

- giving effect to the aims of any applicable environmental planning instrument
- facilitating permissible development
- achieving the objectives of the relevant land zones.

The key amendment is the insertion of section 4.15(3A) which:

- prevents the consent authority requiring more onerous standards than a DCP provides,
- requires the consent authority to be 'flexible' and allow 'reasonable alternative solutions' in applying DCP provisions with which a development application does not comply,
- limits the consent authority's consideration of the DCP to the development application (preventing consideration of previous or future applications of the DCP).

We request that Council applies considered flexibility where the application seeks variations to numerical development controls in the DCP as justified in this report. In particular we consider that the variation to the rear setback for Lot 1 and the front boundary setback for the car stand area for Lot 2 is a reasonable alternative solution to compliance where the site conditions results in a challenge to designing for new development which fully respects front boundary setback control.

It is considered that the proposed design respects the desired character objectives of the DCP in that it reinforces the existing residential character of the area and is compatible with the existing uses in the vicinity.

7.4 Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

No matters of relevance are raised in regard to the proposed development.

7.5 The regulations (to the extent that they prescribe matters for the purposes of this paragraph),

No matters of relevance are raised in regard to the proposed development.

7.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

It is considered that the proposal, which seeks consent for the proposed Torrens Title subdivision of one lot into two lots and construction of a stormwater easement, new car stand area, driveway and crossing, will not unreasonably impact upon the amenity of adjoining properties or upon the character of the surrounding area. It is considered that the resultant development is compatible with and will complement the residential character of the area.

The proposal is considered to be well designed having regard to the relevant provisions of the Council's WLEP 2011.

7.7 The suitability of the site for the development

The subject land is currently zoned R2 Low Density Residential under the Warringah Local Environmental Plan 2011 and is considered suitable for the proposed development.

7.8 Submissions made in accordance with this Act or the regulations

This is a matter for Council in the consideration of this proposal.

7.9 The public interest

The proposal will not impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered to be within the public interest.

8.0 Conclusion

The principal objective of this development is to provide for the proposed Torrens Title subdivision of one lot into two lots and construction of a new car stand area, driveway and crossing, which respects and complements the site's location.

It is considered that the proposed works satisfy the stated objectives of Council's Development Controls. By maintaining our neighbours amenity and by complementing the existing style and character of the surrounding locality, the stated objectives have been satisfied.

As the proposed development will not have any significant impact on the environment, scenic quality of the area or the amenity of the adjoining allotments, the issue of Development Consent under the delegation of Council is requested.

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APPENDIX:
CLAUSE 4.6 SUBMISSION – MINIMUM LOT SIZE

**WRITTEN SUBMISSION PURSUANT TO CLAUSE 4.6 OF
WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

45 OXFORD FALLS ROAD, BEACON HILL

**FOR THE PROPOSED TORRENS TITLE SUBDIVISION OF ONE LOT INTO TWO LOTS AND
CONSTRUCTION OF A NEW CAR STAND AREA, DRIVEWAY AND CROSSING**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MINIMUM SUBDIVISION LOT SIZE AS
DETAILED IN CLAUSE 4.1 OF THE WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

For: Proposed Torrens Title subdivision of one lot into two lots, and construction of a new car stand area, driveway and crossing
At: 45 Oxford Falls Road, Beacon Hill
Owner: Jiri and Marcela Albrecht
Applicant: Jiri and Marcela Albrecht c/- Vaughan Milligan Development Consulting

1.0 Introduction

This written submission is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011. In this regard it is requested Council support a variation with respect to compliance with the minimum subdivision lot size as described in Clause 4.1 of the Warringah Local Environmental Plan 2011 (WLEP 2011).

2.0 Background

Clause 4.1 restricts the minimum subdivision lot size in this locality to 600m² and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The resultant allotments which have been defined as Proposed Lots 1 and 2, will have the following indices:

Site Area (Lot 1):	585m ²
Site Area (Lot 2):	541m ²

Lot 1 will present a variation of 15m² or 2.5% from the standard.

Lot 2 will present a variation of 59m² or 9.83% from the standard.

The controls of Clause 4.1 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is Clause 4.1 of the LEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act includes:
 - “(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,.”*
- (b) Clause 4.1 relates to the size of the allotments. Accordingly, Clause 4.1 is a development standard.

3.0 Purpose of Clause 4.6

The Warringah Local Environmental Plan 2011 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of the LEP provides:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Clause 4.1 (the Minimum subdivision lot size) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the minimum subdivision lot size development standard pursuant to Clause 4.1 of WLEP which specifies a minimum lot size of 600m² in this area of Beacon Hill.

Proposed Lot 1 will present a lot size of 585m², which is a variation to the standard of 15m² or 2.5%.

Proposed Lot 2 will present a lot size of 541m², which is a variation to the standard of 59m² or 9.83%.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of WLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Planning Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of the LEP provides:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

The proposed subdivision is not subject to Clause 4.6(6) which restricts the size of allotments to be subdivided in certain zones. The site is zoned R2 low density residential and is not subject to the provisions of Clause 4.6(6).

Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude Clause 4.1 of the LEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The development will achieve a better outcome in this instance as the site will provide for the retention of the existing dwelling and create the opportunity to construct a new dwelling with a car stand area and access from Oxford Falls Road through the subdivision of one lot into two lots, which is consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

- To provide for the housing needs of the community within a low density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

As sought by the zone objectives, the proposal will provide for proposed Torrens Title subdivision of one lot into two lots, and construction of a new car stand area, driveway and crossing, with the proposal being sensitive to the location and the topography of the locality.

The two new lots will have separate pedestrian and vehicular access, with Lot 1 to retain existing access via a driveway from Dareen Street and the new Lot 2 to be accessible via a new driveway from Oxford Falls Road.

Despite the non-compliance with the minimum lot size control, the proposed subdivision will provide lots that are capable of accommodating dwellings that will provide suitable amenity for occupants and neighbours, and therefore compliance with the maximum height standard is unnecessary and unreasonable in the circumstances of the case.

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the minimum subdivision lot size standard contained in Clause 4.1 of WLEP.
- 5.2 Clause 4.1 of WLEP specifies a minimum subdivision lot size of 600m² in this area of Beacon Hill.
- 5.3 Proposed Lot 1 will present a lot size of 585m², which is a variation to the standard of 15m² or 2.5%.

Proposed Lot 2 will present a lot size of 541m², which is a variation to the standard of 59m² or 9.83%.

6.0 Relevant Caselaw

- 6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

- 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
- 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
- 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
- 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
- 21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to*

that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is Clause 4.1 of WLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.1 and the objectives for development for in the R2 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes Clause 4.1 of WLEP?

7.0. Request for Variation

7.1 Is Clause 4.1 of WLEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act includes:

“(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work.”

- (b) Clause 4.1 relates to the size of the proposed allotments. Accordingly, Clause 4.1 is a development standard.

7.2 Is compliance with Clause 4.1 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in Wehbe.
- (b) The first way in Wehbe is to establish that the objectives of the standard are achieved.
- (c) Each objective of the minimum subdivision lot size standard, as outlined under Clause 4.1, and reasoning why compliance is unreasonable or unnecessary, is set out below:

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,

The R2 Low Density Residential Zone contemplates low density residential uses on the land. The proposed subdivision is consistent with the existing subdivision pattern in the locality as noted in Table 1 below. The proposal is therefore considered to be in keeping with the residential character of the locality.

Table 1: Size of existing lots in the immediate locality

Address	Lot	DP	Land Area (m ²)
301/0 Brooker Avenue BEACON HILL NSW 2100	301	599065	49.00
44A Oxford Falls Road BEACON HILL NSW 2100	3	862488	317.20
44B Oxford Falls Road BEACON HILL NSW 2100	2	862488	298.20
44C Oxford Falls Road BEACON HILL NSW 2100	1	862488	339.80
44D Oxford Falls Road BEACON HILL NSW 2100	4	862488	262.50
35 Oxford Falls Road BEACON HILL NSW 2100	1	850352	251.90
35 A Oxford Falls Road BEACON HILL NSW 2100	2	850352	382.60
8A Oxford Falls Road BEACON HILL NSW 2100	150	873000	393.40
210A Warringah Road BEACON HILL NSW 2100	202	871952	420.10
39 Tristram Road BEACON HILL NSW 2100	1	859147	444.40
39A Tristram Road BEACON HILL NSW 2100	2	859147	408.00
13 Tristram Road BEACON HILL NSW 2100	1	840371	830.90

13A Tristram Road BEACON HILL NSW 2100	2	840371	416.90
1B Tristram Road BEACON HILL NSW 2100	51	846606	323.70
1A Daines Parade BEACON HILL NSW 2100	2	871808	400.20
80A Iris Street BEACON HILL NSW 2100	31	1067494	279.20
80B Iris Street BEACON HILL NSW 2100	32	1067494	279.30
51A Iris Street FRENCHS FOREST NSW 2086	2	1018589	422.50
51 Iris Street FRENCHS FOREST NSW 2086	1	1018589	670.90
49 Iris Street FRENCHS FOREST NSW 2086	1	862415	380.60
49 A Iris Street FRENCHS FOREST NSW 2086	2	862415	709.50
11 Patanga Road FRENCHS FOREST NSW 2086	1	853565	327.90
92 Dareen Street FRENCHS FOREST NSW 2086	2	853565	271.50
90A Dareen Street FRENCHS FOREST NSW 2086	1	855917	380.10
90B Dareen Street FRENCHS FOREST NSW 2086	2	855917	380.80
89 Dareen Street FRENCHS FOREST NSW 2086	1	1070945	290.90
91 Dareen Street FRENCHS FOREST NSW 2086	2	1070945	291.10
14A Patanga Road FRENCHS FOREST NSW 2086	2	865016	256.20
14 Patanga Road FRENCHS FOREST NSW 2086	1	865016	380.60
16 Patanga Road FRENCHS FOREST NSW 2086	1	1206353	318.70
16A Patanga Road FRENCHS FOREST NSW 2086	2	1206353	319.20
20 Patanga Road FRENCHS FOREST NSW 2086	101	857954	337.70
31 Iris Street FRENCHS FOREST NSW 2086	100	857954	488.40
27 Iris Street FRENCHS FOREST NSW 2086	1	848217	383.00
27A Iris Street FRENCHS FOREST NSW 2086	2	848217	434.00
25 Iris Street FRENCHS FOREST NSW 2086	1	836660	433.00
19 Inverness Avenue FRENCHS FOREST NSW 2086	2	836660	475.10
1A Harmston Avenue FRENCHS FOREST NSW 2086	592	843492	349.70
36 Frenchs Forest Road East FRENCHS FOREST NSW 2086	591	843492	495.00
32A Frenchs Forest Road East FRENCHS FOREST NSW 2086	1	1065395	377.40
32 Frenchs Forest Road East FRENCHS FOREST NSW 2086	2	1065395	377.40
305A Warringah Road BEACON HILL NSW 2100	61	1031836	276.70
305B Warringah Road BEACON HILL NSW 2100	62	1031836	278.70
303A Warringah Road BEACON HILL NSW 2100	51	1031837	276.70
303B Warringah Road BEACON HILL NSW 2100	52	1031837	278.70

As discussed above, the proposed subdivision results in allotments which are in keeping with the size of existing lots in the locality. The proposed lots are consistent with the existing pattern of subdivision to the east along Oxford Falls Road.

The proposed Lot 1 can readily accommodate the existing dwelling, and the proposed Lot 2 can accommodate a future dwelling which complies with Council's controls, as noted by the indicative building envelope in the submitted Subdivision Plan (Sheet No. 1).

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,

This control is not relevant in this instance as the land is zoned for residential development and is not suitable for commercial or industrial development.

(c) to protect the integrity of land holding patterns in rural localities against fragmentation,

This control is not relevant in this instance as the land is not within a rural locality and is not sensitive to fragmentation.

(d) to achieve low intensity of land use in localities of environmental significance,

The subject site has not been noted as being of environmental significance.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,

The application submission is supported by a Bushfire Risk Assessment prepared by Planning for Bushfire Protection, Reference No 1299-R dated 21 June 2020, which demonstrates that the proposed development can comply with the Specific Objectives for Subdivision in accordance with the requirements of Planning for Bushfire Protection. The report also includes recommended construction levels and considers bushfire mitigation measures in combination for the existing dwelling on Proposed Lot 1 and the proposed new dwelling on Proposed Lot 2.

(f) to protect and enhance existing remnant bushland,

The subject site does not contain remnant bushland and therefore this control is not relevant in this instance

(g) to retain and protect existing significant natural landscape features,

The site is not noted as containing existing significant natural landscape features however and features, however an exposed rock shelf and low escarpment in the lower portion of the site does provide an attractive aesthetic to the view of the site from the public domain.

The majority of this rock shelf is to be retained, with the new dwelling located above the rock escarpment, which will substantially preserve the site's contribution to the locality.

(h) to manage biodiversity,

The development not will not require the removal of any significant vegetation. Future landscape plans will be provided with the new dwelling, which will allow for the reintroduction of locally occurring planting species, complementing the by adversity in the area.

(i) to provide for appropriate stormwater management and sewer infrastructure.

Each lot will have access to a stormwater disposal system in accordance with Council's

controls. Stormwater from each lot will be directed by a gravity to the street gutter in Oxford Falls Road.

Both lots will have access to Water Board sewer infrastructure.

7.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

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

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element*

of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

There are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed lot configuration will allow for the retention of the existing dwelling, which is in good order and to require its demolition and replacement with a new structure would not constitute good ecologically sustainable development (cl 1.3(b)).
- The proposed subdivision, which as discussed introduces an appropriate and compatible lot size within the locality, which promotes the orderly & economic use of the land (cl 1.3(c)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a new allotment that provides sufficient building area to accommodate a new dwelling of a size and potential floor area for future occupants, with appropriate residential amenity.

The location of the future building platform will allow for the retention of views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the minimum subdivision lot size.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the

development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.3A and the objectives of the R2 Low Density Residential Zone?

- (a) Section 4.2 of this written request suggests the 1st test in *Wehbe* is made good by the development.
- (b) Each of the objectives of the R2 Low Density Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ also found that *"The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone"*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the variation to the minimum subdivision lot size, the proposed subdivision will be consistent with the individual Objectives of the R2 Low Density Residential Zone for the following reasons:

The site is located in the R2 Low Density Residential Zone. The objectives of the R2 zone are noted as:

- *To provide for the housing needs of the community within a R2 Low Density Residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

It is considered that notwithstanding the noncompliance of each lot with the minimum subdivision lot size, the proposed subdivision of one lot into two will be consistent with the individual Objectives of the R2 Low Density zone for the following reasons:

- ***To provide for the housing needs of the community within a R2 Low Density Residential environment.***

As found in Nessdee, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form of development within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

As previously noted in Table 1 which outlined the variety lot sizes in the area, the proposed resulting lot sizes will allow for residential development in accordance with the expectations of the community for a dwelling size with appropriate amenity that is compatible with the R2 Low Density Residential zone.

As discussed above, the proposed subdivision results in allotments which are in keeping with the size of existing lots in the locality. The proposed lots are consistent with the existing pattern of subdivision to the east along Oxford Falls Road.

Proposed Lot 1 can readily accommodate the retention of the existing dwelling, and Proposed Lot 2 can accommodate a future dwelling which complies with Council's controls, as noted by the indicative building envelope in the submitted Subdivision Plan (Sheet No. 1).

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

The development does not suggest any alternate land uses and this Objective is not directly relevant to the subject proposal.

- ***To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.***

The proposal provides for the Torrens Title subdivision of one lot into two lots and construction of a new car stand area, driveway and crossing, in a manner which will retain the single dwelling character of the immediate area.

This objective is achieved in that the proposal will not require any significant further site disturbance or excavation, with minimal alteration to the natural ground levels and through the retention of generous areas of soft landscaping, will maintain the balance between landscaping and built form.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed minimum subdivision lot size control, whilst

maintaining consistency with the zone objectives.

7.5 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.6 Has the Council considered the matters in clause 4.6(5) of MLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed subdivision of the land for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

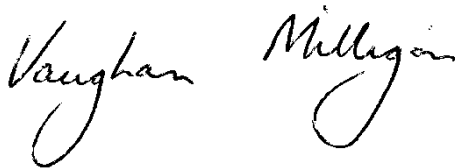
7.0 Conclusion

This objection to the minimum lot size specified in Clause 4.1 of the Warringah LEP 2011 adequately demonstrates that the objectives of the standard will be met.

The submission demonstrates that the lots can be readily developed in a manner which is consistent with the surrounding pattern and can achieve the Objectives of the R2 Low Density Zone.

The density of the proposed subdivision is appropriate for the site and locality.

Strict compliance with the minimum lot size control would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN
Town Planner