

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0298
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Responsible Officer:	David Auster
Land to be developed (Address):	Lot 10 DP 12435, 25 Kevin Avenue AVALON BEACH NSW 2107
Proposed Development:	Subdivision of one lot into two lots
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Sixjay Holdings Pty Limited
Applicant:	Sixjay Developments Pty Ltd

Application Lodged:	23/03/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	01/05/2020 to 15/05/2020
Advertised:	Not Advertised
Submissions Received:	10
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 16.8%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 96,200.00
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The proposal is for subdivision of the site into two new lots, in a battle axe type configuration, with a driveway running along the south eastern side boundary.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is not suitable and appropriate development for the subject site.

The proposal will not comply with the minimum subdivision lot size, and is not considered to be consistent with the predominant size, pattern and configuration of subdivision in the area. Further, it will create various other impacts in terms of tree removal, non-compliance with front building line controls, streetscape impacts, and will be inconsistent with the desired character of the Avalon Beach Locality. Approval of the application would set a precedent for non-compliance with the minimum lot size in the surrounding lots which are of a highly consistent size, pattern and configuration, which would in turn make it difficult for Council to uphold the minimum subdivision lot size development standard in the

surrounding vicinity.

Council received a number of submissions, which focused mainly on issues such as undersized lots, loss of trees and fauna, parking and traffic impacts, non-compliance with relevant planning controls, visual impacts and drainage. The concerns raised in the submissions are generally supported, to the extent discussed within the Submissions section of this report.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be refused for the reasons attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves Torrens title subdivision of one existing lot into two new lots. The proposed subdivision is in a battle axe type configuration, with the existing dwelling to remain on the proposed new rear Lot 2, and existing structures at the front of the property (that would fall within proposed Lot 1) to be demolished.

Proposed Lot 1 (front lot) has an area of 582.1sqm, a width of 18.29m, and a depth of 38.26m.

Proposed Lot 2 (rear lot) has an area of 693.9sqm, width of 18.29m, and depth of 37.94m.

Tree removal is also proposed, including two existing street trees, and a further four trees on the site to accommodate the proposed right of way and easement for services.

Storm water is proposed to drain by gravity directly to Kevin Street.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

- Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
- Pittwater 21 Development Control Plan - A4.1 Avalon Beach Locality
- Pittwater 21 Development Control Plan - B2.2 Subdivision - Low Density Residential Areas
- Pittwater 21 Development Control Plan - B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land
- Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve
- Pittwater 21 Development Control Plan - B6.2 Internal Driveways
- Pittwater 21 Development Control Plan - C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities
- Pittwater 21 Development Control Plan - C4.7 Subdivision - Amenity and Design
- Pittwater 21 Development Control Plan - D1.1 Character as viewed from a public place
- Pittwater 21 Development Control Plan - D1.4 Scenic protection - General
- Pittwater 21 Development Control Plan - D1.8 Front building line

SITE DESCRIPTION

Property Description:	Lot 10 DP 12435 , 25 Kevin Avenue AVALON BEACH NSW 2107
Detailed Site Description:	<p>The site is located on the higher, south western side of Kevin Avenue. It is rectangular in shape, has a width of 18.29m, a depth of 76.25m, and area of 1394sqm. The topography slopes down from rear to front, with a fall of approximately 9.5m across the length of the site. There are a number of mature trees on site and in the road reserve in front of the site.</p> <p>There is an existing dwelling on the site, located towards the rear, with a swimming pool, garage and shed located more centrally in front of the dwelling. There is also a secondary dwelling located near the front of the property. The existing driveway access is from the northern corner of the site.</p> <p>Surrounding development consists generally of detached dwellings.</p>

Map:



SITE HISTORY

The site has a history of residential use. The most recent approval was for a secondary dwelling towards the front of the property, but given that demolition is proposed for the structures that would fall within proposed Lot 1 at the front of the site, there is no recent or relevant history to the current application.

More relevantly to the current application, Council refused a very similar application on the adjoining neighbour to the north west (27 Kevin Avenue) - DA2018/1066 for Subdivision of one lot into two lots, demolition works and construction of a driveway. This application was refused by the Northern Beaches Local Planning Panel on 21 November 2018. This application is currently under appeal at the Land and Environment Court, with a hearing date set for 4 December 2020.

Current Application

During the assessment process of the current application, Council requested that the applicant withdraw the application for reasons including non-compliance with the minimum subdivision lot size of the PLEP, and inconsistency with the requirements and objectives of clauses B4.22 – Preservation of Trees and Bushland Vegetation, B4.5 – Landscape and Flora and Fauna Enhancement Category 3 Land, B4.7 – Pittwater Spotted Gum Forest – Endangered Ecological Community (PWSGF-EEC), C4.2 – Subdivision – Access Driveways and Off-Street Parking Facilities, C4.7 – Subdivision – Amenity and Design, and D1.4 – Scenic Protection - General of the PDCP. Council's Development Engineer's concerns (as included in the Referrals section of this report) were also included in the letter requesting withdrawal.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental	See discussion under the PLEP 2014 cl. 4.1 Minimum subdivision lot size section of the report.

Section 79C 'Matters for Consideration'	Comments
planning instrument	<p>In summary, the proposed subdivision is not supported as it does not demonstrate an acceptable impact on the natural environment and will result in two (2) undersized lots that are not consistent with the desired character of the locality and the pattern, size and configuration of existing lots in the locality.</p> <p>As detailed in this report, assessment has found that the proposal does not satisfy several PLEP 2014 Clauses, including:</p> <ul style="list-style-type: none"> • Clause 1.2 - Aims of The plan; • Clause 4.1 - Minimum subdivision lot size; • Clause 4.6 - Exceptions to development standards;
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	<p>Pittwater 21 Development Control Plan (P21DCP) applies to this proposal.</p> <p>As detailed in this report, assessment has found that the proposal does not satisfy several P21DCP Clauses, including:</p> <ul style="list-style-type: none"> • A4.1 Avalon Beach Locality; • B2.2 Subdivision - Low Density Residential Areas; • B4.6 Wildlife Corridors; • B4.22 Preservation of Trees and Bushland Vegetation; • B6.1 Access driveways and Works on the Public Road Reserve; • B6.2 Internal Driveways; • C1.1 Landscaping; • C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities; • C4.7 Subdivision - Amenity and Design; and • D1.8 Front building line.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p>

Section 79C 'Matters for Consideration'	Comments
	<p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. These matters can be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<p>Section 79C (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>	<p>(i) <u>Environmental Impact</u> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Development Control Plan section in this report.</p> <p>(ii) <u>Social Impact</u> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <u>Economic Impact</u> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 79C (1) (c) – the suitability of the site for the development</p>	<p>The site is considered unsuitable for the proposed development.</p> <p>In summary, the proposal is not supported as it does not demonstrate an acceptable impact on the natural environment and will result in two (2) undersized lots that are not consistent with the desired character of the locality and the pattern, size and configuration of existing lots in the locality.</p>
<p>Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>In summary a total of ten (10) submissions were received from the notification of the application.</p> <p>The submissions raised concerns in relation to the subdivision pattern, under sized lots, loss of trees, established front building line non-compliance and the unsuitability of the site for the proposed subdivision. These concerns are generally concurred with and form reasons for refusal of the application. See discussion under Submissions section of this report.</p>

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (e) – the public interest	As detailed throughout this report, the assessment has found the proposal to be contrary to the relevant requirements of PLEP 2014 and P21DCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 01/05/2020 to 15/05/2020 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 10 submission/s from:

Name:	Address:
Mr Matthew James Telfer	34 Kevin Avenue AVALON BEACH NSW 2107
Graeme Douglas Bell Louise Nicole Bell	29 Kevin Avenue AVALON BEACH NSW 2107
Mrs Louise Christina Telfer	34 Kevin Avenue AVALON BEACH NSW 2107
Ms Keelie Jane Silvester	52 Kevin Avenue AVALON BEACH NSW 2107
Mr Ryan Heath Georgeson Mrs Belinda Jane Georgeson	28 Kevin Avenue AVALON BEACH NSW 2107
Mrs Rebekah Chandler	18 Park Avenue AVALON BEACH NSW 2107
Mrs Jennifer Anne Reddan	22 Kevin Avenue AVALON BEACH NSW 2107
Mr John Albert Reid Mrs Christine Reid	18 Kevin Avenue AVALON BEACH NSW 2107
Mr Matthew Robert Chandler	46 Kevin Avenue AVALON BEACH NSW 2107
Mrs Rosalyn Mary Short Barry Short	16 B Kevin Avenue AVALON BEACH NSW 2107

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

- Undersized lots and inconsistent subdivision configuration and pattern
- Loss of trees and fauna
- Parking and traffic impacts

- Non-compliance with planning controls
- Timing of application
- Notification of application
- Visual impact of driveway
- Privacy
- Drainage
- Waste management plan inadequate

The matters raised within the submissions are addressed as follows:

- **Undersized lots and inconsistent subdivision configuration and pattern**
Concerns were raised with regard to the proposed non-compliance with the minimum lot size requirement and inconsistency with the objectives of clause 4.1 of the LEP, and the justifications provided in the application with respect to other undersized lots in the area.

Comment:

This issue is discussed in detail under the *clause 4.6 Exceptions to development standards* section of this report. In summary, the proposed subdivision is not supported for reasons including that it will result in two (2) undersized lots that are inconsistent with the desired character of the locality, and inconsistent with the pattern, size and configuration of existing lots in the locality, and will result in unacceptable impacts to the existing natural environment.

Further, an assessment of the applicant's written request to vary the development standard has found that it has not adequately justified that the proposal achieves the objectives of *clause 4.1 Minimum subdivision lot size*, and therefore has failed to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case.

Therefore, the concerns are supported, and refusal of the application is recommended.

- **Loss of trees and fauna habitat**
Concerns were raised with regard to the proposed tree removal, both as a result of the proposed subdivision, and further tree removal later on as a result of the ultimate development of the new lot.

Comment:

Council's Landscape, and Bushland and Biodiversity departments have assessed the proposal, and are generally satisfied that the proposal is consistent with the relevant controls with regard to tree removal and preservation of trees in the Pittwater 21 Development Control Plan, including clauses *B4.22 Preservation of Trees and Bushland Vegetation*, *C4.7 Subdivision - Amenity and Design*, *D1 Avalon Beach Locality* (see Referrals section of this report).

However, an assessment against the objectives of *clause 4.1 Minimum subdivision lot size* has found that the proposed removal of trees for the new right of way and driveway is unacceptable, and an indicator that the site is not suitable for the proposed development.

Therefore, the submissions are generally supported in this regard, and this issue is included as a recommended reason for refusal.

- **Parking and traffic impacts**
Concerns were raised with regard to lack of on-street parking available in the area, and extra

traffic being generated.

Comment:

Any future development of the proposed new lots (if approved) would be required to comply with the minimum on-site parking requirements (two spaces per dwelling). The applicant has provided a concept plan indicating compliance with this requirement would be possible. However, Council's Development Engineers have assessed the proposal, and are not satisfied that adequate concept access to parking has been demonstrated (see Referrals section of this report). As such, this is considered a reason to refuse the development.

The submissions are not therefore generally supported in this regard.

- **Non-compliance with planning controls**

Concerns were raised with regard to future development of proposed Lot 1 and future non-compliance with relevant requirements such as front building setbacks, landscaped area and building height.

Comment:

The future residential development of each lot would be the subject of separate development applications.

Clause D1.8 Front building line requires a minimum front setback of whichever is greater of the established building line, or 6.5m. *D1.13 Landscaped Area - General* requires a minimum landscaped area of 50%. The maximum building height applicable to the site under *clause 4.3 Height of buildings* is 8.5m. During the assessment process the applicant provided a concept plan indicating proposed lot 1 would in theory be capable of being developed with a dwelling which is compliant with the height and minimum landscaped area requirements, but that would not comply with the established front building line (see detailed discussion under clause D1.8 in this report).

As such, the submissions are partially supported in this regard, and the inability of the proposed lot 1 to accommodate a new dwelling that could comply with the front building line control is a recommended reason for refusal.

- **Timing of application**

Concerns were raised with the timing of the application during a pandemic.

Comment:

This is not a matter for consideration under the Environmental Planning and Assessment Act. The proposal has been lodged and notified in accordance with the relevant requirements in terms of documentation provided, and neighbours have had ample opportunity to lodge submissions in regard to the application. The timing of the application in relation to the pandemic is not a matter that is considered to be relevant in the assessment of the proposal.

- **Notification of application**

Concerns were raised with regard to the notification sign not being displayed.

Comment:

During the assessment process, the proposal was re-notified due to failure to display the notification sign. The applicants subsequently provided photographic evidence of the sign being displayed, and the submissions are considered to be satisfied in this regard.

- **Visual impact of driveway**

Concerns were raised regarding the visual impacts of the driveway, and impacts from headlights from cars using the driveway.

Comment:

The proposed driveway would be a minimum of 40m in length once constructed, and would present a significant streetscape impact for pedestrians given the length, and the consequence that it would result in the removal of existing established trees both on the site and within the road reserve. The concerns are generally supported in this regard.

- **Privacy**

Concerns were raised regarding the raised level of any eventual dwelling on proposed Lot 1 and subsequent privacy impacts.

Comments:

This would be an issue for assessment at the time of a development application for a dwelling, should the subdivision application be approved. This issue is not considered to warrant refusal of the subdivision application, as dwelling plans are concept only at this stage. The proposed subdivision is not considered to create any obvious impossibilities in protecting privacy to a reasonable degree in the future.

The submissions are not supported in this regard.

- **Drainage**

Concerns were raised regarding drainage and existing flooding issues in Kevin Street.

Comment:

The site is not identified as being in a flood prone area. Council's Development Engineers have assessed the proposal, and while they have raised concerns with the proposed vehicular access, they have not raised concerns with the drainage. Any future development of the site would drain to the street in accordance with Council policy.

The submissions are not supported in this regard.

- **Waste management plan inadequate**

Concerns were raised that the waste management report submitted was inadequate in describing the amount of material that would be required to be removed as a result of the development if approved.

Comment:

The waste management report provided has been filled out generally in accordance with the requirements. If the application were to be approved, this issue could be dealt with by condition of consent to dispose of waste appropriately.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application proposes the Torrens Title Subdivision of 1 allotment to create 2 allotments. Council's Landscape Referral staff have assessed the proposal

Internal Referral Body	Comments
	<p>against the following Pittwater 21 DCP Controls: B4.22 Preservation of Trees and Bushland Vegetation C4.7 Subdivision - Amenity and Design D1 Avalon Beach Locality</p> <p>The proposed Lot 1 supports numerous existing indigenous and native trees whilst the proposed Lot 2 in the majority supports exotic plantings with the exception of two Cabbage Tree Palms and a Lillypilly.</p> <p>An arboricultural assessment prepared by Jacksons Nature Works is provided with the application, nominating 5 indigenous trees to be removed for the right of way and easement for services, including T4 Cheese Tree (road verge), T5 Cheese Tree (road verge), T7 Red Bloodwood, T10 Cheese Tree, and T11 Spotted Gum.</p> <p>The following 11 existing trees are assessed as being able to be retained within the site on Lot 1: T8 Scribbly Gum, T9 Spotted Gum, T12 Spotted Gum, T13 Red Bloodwood, T14 Red Bloodwood, and group T15-20 Turpentines.</p> <p>The following 8 existing trees/palms are assessed as being able to be retained within the site on Lot 2: T21 Alexander Palm, T22 Alexander Palm, T23 Alexander Palm, T26 Lillypilly, T28 Jacaranda, T29 Cabbage Tree Palm, T30 Cabbage Tree Palm and T31 Bottlebrush.</p> <p>The following road reserve trees are proposed for retention: T2 Scribbly Gum, T3 Cheese Tree, and T1 Angophora fronting No. 27 Kevin Avenue,</p> <p>All existing trees within adjoining property are proposed for protection, including: T25, T27, T32, T33, T34, T35 and T36.</p> <p>The arboricultural assessment is based on Subdivision of land information only, and has not been updated to assess the impact upon existing trees from the the subsequent issue of the Site Plan and Subdivision Concept that provides an Indicative Building Layout prepared by Gartner Trovato Architects.</p> <p>On review of the Site Plan and Subdivision Concept, all 11 existing trees within the proposed Lot 1 are proposed for retention, and this is supported by the design concept to suspend any future dwelling on pier/pole footings. The Indicative Building Layout generally has manageable intrusions into the tree protection zone and avoids the structural root zones structural protection zones of existing trees on Lot 1.</p> <p>Based solely on the landscape outcomes of B4.22 Preservation of Trees and Bushland Vegetation, development of a new dwelling on Lot 2 does not impact upon the existing natural environment, subject to additional canopy tree planting within the front setback (x 1) and within the rear setback (x 1) of Lot 1. The landscape outcomes of the</p>

Internal Referral Body	Comments
	retained dwelling on the proposed Lot 2 does not impact the existing landscape amenity of the site.
NECC (Bushland and Biodiversity)	<p>Council's Bushland and Biodiversity section considers the Development Application to be consistent with the following Pittwater 21 DCP 2014 Controls:</p> <p>B4.22 Preservation of Trees and Bushland Vegetation Outcomes: To protect and enhance the urban forest of the Northern Beaches. To effectively manage the risks that come with an established urban forest through professional management of trees. To minimise soil erosion and to improve air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise reduction. To protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities. To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long-term. To protect and enhance the scenic value and character that trees and/or bushland vegetation provide. Tree protection and tree replacement conditions have been recommended in the Landscape referral. The development application complies with this control.</p>
NECC (Development Engineering)	<p>The nature strip within the road reserve is steep and has trees which may be significant. An additional access driveway is proposed which is not supported since the street frontage is less than 30m (Clause 4.2 Pittwater 21 DCP 2014). There is no car parking provision for the existing dwelling which is proposed to be retained. There is insufficient information with regards to provision for a suitable access to both lots. In this regards a common driveway (right of carriageway) is recommended to be located adjacent to northern boundary where the current vehicular crossing is located. This will negate the need to clear the current vegetation within the public road and reduce changes to the streetscape. The subdivision lacks the following information:</p> <ul style="list-style-type: none"> • A concept driveway plan showing a 3.0 metres wide driveway serving both lots. • Provision of two car spaces for the existing dwelling with a turning area to ensure vehicles can exit in a forward direction. • The front lot shall have access to the common driveway. No additional access is permitted. • Submission of a revised inter-allotment drainage plan with a single connection to the kerb servicing both lots. It is to be noted that the front lot will require provision of OSD when the dwelling is proposed in the future. <p>DATED 14/07/2020</p> <p>The submitted concept driveway and turning area lacks details (Trim 2020/284121) and is not satisfactory. The driveway plans has not provided details of existing and proposed finished surface levels. The</p>

Internal Referral Body	Comments
	<p>vehicular turning area proposed for the existing dwelling does not appear to comply with AS/NZS 2890.1:2004.</p> <p>A detail longitudinal sectional plan taken from center of Kevin road to the proposed garages design in accordance with AS/NZS 2890.1:2004 and Council standard crossing profile within the roadway showing existing and proposed levels have not been provided. A vehicular turning swept path for the proposed garages have also not been provided. As result the concept driveway plan does not demonstrate compliance with B6 of Pittwater 21 DCP.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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 44 - Koala Habitat Protection

The SEPP applies to land within Local Government Areas (LGAs) listed under Schedule 1 of the Policy. In addition, Part 2 of the Policy outlines the process to assess the likelihood of the land in question being potential or core koala habitat. Part 2 applies to land which has an area of greater than 1 hectare or has, together with any adjoining land in the same ownership, an area of more than 1 hectare.

The subject site is less than 1 hectare in area, and clause 9 of the SEPP does not therefore comply.

Clause 10 states that a council is not prevented from granting consent to a development application for consent to carry out development on land if—

- (a) the land does not have an approved koala plan of management applying to the land, or
- (b) the council is satisfied that the land is not core koala habitat.

It is noted that two of the trees proposed for removal (Tree 7 *Corymbia gummifera* - Red Bloodwood, and Tree 11 *Corymbia maculata* - Spotted Gum) are listed as Koala use tree species. However, the area is not in a koala management area, there is no approved koala plan of management for the land, and Council has no evidence that the land is core Koala habitat. Council's Bushland and Biodiversity

team has also not raised any concerns in this regard.

Accordingly, the requirements of the SEPP are met.

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Permitted	Proposed	% Variation	Complies
4.1 - Minimum subdivision lot size	700m ²	<u>Lot 1</u> Effective Lot: 582.1m ² Access Handle: 117.9m ² * <u>Lot 2</u>	16.8% (117.9m ²) N/A	No N/A

		Effective Lot: 693.9m ²	0.9% (6.1m ²)	No
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* Clause 4.1(3A) excludes the area of an access handle from the calculation of the lot size in a battle-axe subdivision.

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance

Requirement:	700m ²
Proposed:	Lot 1: 582.1m ² (excluding ROW) Lot 2: 693.9m
Is the planning control in question a development standard?	Yes
If numerical enter a % variation to requirement	Lot 1: 16.8% (117.9m ²) Lot 2: 0.9% (6.1m ²)

Assessment of request to vary a development standard

The following assessment of the variation to Clause 4.1 - Minimum Subdivision Lot Size development standard has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

Clause 4.6 Exceptions to development standards

(1) *The objectives of this clause are as follows:*

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

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

Comment

Clause 4.1 - Minimum subdivision lot size development standard is not expressly excluded from the

operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) Development consent must not be granted for development that contravenes a development standard unless:

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

cl. 4.6 (4)(a)(i) (Justification) assessment

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl. 4.6 (3).

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

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

Comment

The applicant's written request has addressed the matters required by cl 4.6 (3)(a) by way of providing justification which seeks to demonstrate that the objectives of the development standard have been met, notwithstanding the non-compliance with the development standard.

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

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

Comment

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is

not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicant's written request has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The applicant's written request submits that the development and resultant lots will achieve the objectives of clause 4.1 Minimum Lot Size.

In doing so, the applicant's written request submits that the proposed development is an orderly and economic use and development of the land and that the building is of a good design and will protect the amenity of the surrounding built environment therefore satisfying cl 1.3(c)(g) of the EPA Act.

As discussed below, the assessment of this application has found that the proposal is inconsistent with the relevant objectives. Therefore, Council is not satisfied that the applicant's written request has addressed the matters required to be demonstrated by cl 4.6(3).

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

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

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

Comment:

In considering whether or not the proposed development will be in the public interest consideration must be given to the underlying objectives of the Minimum Subdivision Lot Size development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of the development standard

The underlying objectives of cl 4.1 Minimum Subdivision Lot Size development standard are:

(a) to protect residential character and amenity by providing for subdivision where all resulting lots are consistent with the desired character of the locality, and the pattern, size and configuration of existing lots in the locality.

Comment

In addressing this objective, the author of the request states:

"The proposed lot size and pattern are consistent with the existing development along Kevin Avenue. There are several examples of existing lots that are below the minimum lot size prescribed in the LEP, as demonstrated in the table over page. We note that these lot sizes were also confirmed in the SoEE prepared by Vaughan Milligan Development Consulting in support a development application proposing a similar subdivision at No. 27 Kevin Avenue (DA2018/1066).

Address	Lot Size
16A Kevin Street	477.0m ²
16B Kevin Street	449.9m ²
19A Kevin Street	424.6m ²
19B Kevin Street	502.6m ²
43 Kevin Street	556.2m ²
45 Kevin Street	561.6m ²
47 Kevin Street	561.6m ²
49 Kevin Street	556.1m ²
50 Kevin Street	464.1m ²
51 Kevin Street	556.2m ²
52 Kevin Street	464.2m ²
53 Kevin Street	556.2m ²
55 Kevin Street	556.3m ²
57 Kevin Street	556.3m ²
58 Kevin Street	556.3m ²
59 Kevin Street	556.4m ²
60 Kevin Street	474.7m ²
61 Kevin Street	556.5m ²
62 Kevin Street	474.2m ²
63 Kevin Street	612.6m ²
64 Kevin Street	473.7m ²
66 Kevin Street	473.2m ²
68 Kevin Street	470.6m ²
72 Kevin Street	465.8m ²
76 Kevin Street	465.5m ²
78 Kevin Street	465.0m ²
80 Kevin Street	449.9m ²

With the lot sizes shown above, the proposed subdivision would not be seen as inconsistent with the existing size, pattern and configuration in the Avalon locality."

It is considered that the written request does not provide enough justification with respect to the numerical non-compliance in addition to the pattern and configuration of the subdivision. This is examined further below.

With exception of 16A & 16B, the smaller and under sized lots listed in the written request are located much further to the north along Kevin Avenue and within steeper topography as evident by localised embankments and subject to a previous land subdivision and different deposit plan.

The proposed lots are substantially smaller in area than that of adjoining and nearby properties to the subject site. The following lot size examples are of sites located closer to the subject site; within the flat to gentle sloping topography of the street and close to the start of Kevin Avenue off Barrenjoey Road;

- Nos. 19 - 35 Kevin Avenue: vary from 1,391m² to 1,397m²; and
- Nos. 18 - 48 Kevin Avenue: vary from 740m² to 929m².

Having regard to the above, the proposed battleaxe subdivision will result in two lots which are inconsistent with the subdivision pattern of Kevin Avenue. The location of the smaller, undersized lots adjacent to the larger size adjoining lots will diminish the landscaped residential and streetscape character of this section of Kevin Avenue. As detailed under the P21DCP cl. A4.1 Avalon Beach Locality section of the report, the development will provide smaller irregular shaped lots which will necessitate the removal of significant trees which is inconsistent with the established neighbourhood character.

For the reasons above, the written request does not demonstrate that the resulting lots will be consistent with the desired character of the locality, and the pattern, size and configuration of existing lots in the locality.

Therefore, the development does not satisfy this Objective and is recommended for refusal on this basis.

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

Comment

In addressing this objective, the author of the request states:

"No known hazards are identified on the site".

The proposed subdivision and resultant lots are capable of providing for the construction of building/s that would be safe from hazards.

The development satisfies this Objective.

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

Comment

In addressing this objective, the author of the request states:

"The proposal will maintain the existing dwelling at the rear of the site and will be part of lot 2. The front lot will be able to house a dwelling that can be compatible with the relevant planning controls and set within a landscaped setting.

Some trees are proposed to be removed with the majority to be retained. 2 trees will be replanted on the road reserve. The impact to the natural environment will be minimal".

The driveway will result in the removal of a significant tree located at the head of the access leg. In this respect, the application fails to demonstrate the appropriateness of the development with respect to the retention and enhancement of trees and wildlife corridors, biodiversity values and providing flora and fauna habitats.

In this regard, the written request does not demonstrate that the resulting lots will provide for buildings that will have an acceptable impact on the natural environment or the amenity of neighbouring properties.

Therefore, the development does not satisfy this Objective and is recommended for refusal on this basis.

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

Comment

The subject site does not contain a heritage item and is not located within a heritage conservation area.

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

Comment

In addressing this objective, the author of the request states:

"The proposed carriageway will be adequate and safe access to each lot with essential services proposed being located under the carriageway".

The proposed subdivision could provide for a subdivision where all resulting lots can be provided with adequate and safe access and services. However, as detailed in this report, Council's Development Engineers are not satisfied that adequate access will be provided to the site. Further, provision of access to the site as proposed will result in the removal of established trees, both on the site and within the road reserve.

Therefore, the development does not satisfy this objective.

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

Comment

The subject site is not located within a rural area and therefore this objective is not applicable to this assessment of the application.

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

Comment

In addressing this objective, the author of the request states:

"The existing dwelling will be maintained to lot 2. Lot 1 will be able to accommodate a dwelling that is of high amenity consistent with the planning controls as they reasonably apply".

As detailed in this report, the proposal fails to satisfy the following P21DCP development controls;

- cl. A4.1 Avalon Beach Locality;*
- cl. B2.2 Subdivision - Low Density Residential Areas;*
- cl. B4.6 Wildlife Corridors;*
- cl. B4.22 Preservation of Trees and Bushland Vegetation;*
- cl. B6.1 Access driveways and Works on the Public Road Reserve;*
- cl. B6.2 Internal Driveways;*
- cl. C1.1 Landscaping;*
- cl. C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities;*
- cl. C4.7 Subdivision - Amenity and Design; and*
- cl. D1.8 Front building line.*

For the reasons above, the written request does not demonstrate that the resultant lot sizes and dimensions are able to accommodate development consistent with relevant development controls.

The development does not satisfy this Objective and is recommended for refusal on this basis.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- ***To provide for the housing needs of the community within a low density residential environment.***

Comment

The proposed subdivision (1 lot into 2) would provide for the housing needs of the community within the existing low density residential environment.

It is considered that the development satisfies this objective.

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

Comment

The proposed development would not prohibit or restrict the establishment of facilities or services elsewhere within the zone that would meet the day to day needs of residents.

It is considered that the development satisfies this objective.

- ***To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.***

Comment

The proposed subdivision would create an additional lot that would have the ability to cater for a limited range of land uses of a low intensity and scale, compatible with surrounding land uses.

It is considered that the development satisfies this objective.

Conclusion

As detailed above and notwithstanding the applicant's written request, the assessment of this application has found the proposal to be inconsistent with the underlying objectives of the Minimum subdivision lot size development standard and therefore Council is not satisfied that the proposed development would be in the public interest. On this basis the request to vary the development standard is not supported as it fails to satisfy the requirements of cl 4.6 and this matter is included as a reason for refusal.

cl 4.6 (4)(b) (Concurrence of the Secretary) assessment

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Minimum subdivision lot size development standard is assumed by the Local Planning Panel.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed (building footprint)	% Variation*	Complies
Front building line	6.5m or established building line, whichever is the greatest 27.5m approx established building line for dwellings	Lot 1: 6.5m (concept) Lot 2: Capable of complying	76% N/A	No Yes
Rear building line	6.5m	Lot 1: Capable of complying Lot 2: 8m (existing)	N/A N/A	Yes No change
Side building line	2.5m	Lot 1 <u>North-East</u> Capable of complying <u>South-West</u> Capable of complying Lot 2 <u>North-East</u> (existing) <u>South-West</u> (existing)	N/A N/A N/A N/A	Yes Yes No change No change
Building envelope	3.5m	Lot 1: Capable of complying Lot 2: Inside	N/A N/A	Yes Yes

		envelope		
Landscaped area	50% of site area Lot 1: 291m ² Lot 2: 246.5m ²	Lot 1: Capable of complying Lot 2: 340m ²	N/A N/A	Yes Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.1 Avalon Beach Locality	No	No
B2.2 Subdivision - Low Density Residential Areas	No	No
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	No	No
B6.1 Access driveways and Works on the Public Road Reserve	No	No
B6.2 Internal Driveways	No	No
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C4.1 Subdivision - Protection from Hazards	Yes	Yes
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities	No	No
C4.3 Subdivision - Transport and Traffic Management	Yes	Yes
C4.4 Subdivision - Public Roads, Footpath and Streetscape	Yes	Yes
C4.5 Subdivision - Utility Services	Yes	Yes
C4.6 Service and delivery vehicle access in subdivisions	Yes	Yes
C4.7 Subdivision - Amenity and Design	No	No
D1.1 Character as viewed from a public place	No	No
D1.4 Scenic protection - General	Yes	Yes
D1.8 Front building line	No	No
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	Yes	Yes
D1.13 Landscaped Area - General	Yes	Yes

Detailed Assessment

A4.1 Avalon Beach Locality

The desired future character of the Avalon locality envisages "*houses amongst the trees and not trees amongst the houses*" and requires an "*acceptable balance between maintaining the landforms,*

landscapes and other features of the natural environment, and the development of land".

This control provides both the context and the desired future character statement for the locality. The established subdivision pattern has traditionally been characterised by rectangular allotments with well established dense landscape settings.

The proposed subdivision will result in an irregularly shaped battleaxe lot which is not consistent with larger and more regularly shaped rectangular lots which characterise the Kevin Avenue. Further, the future development necessitates the construction of a driveway to service the rear lot which would require the removal of existing canopy trees which will diminish the landscaped residential and streetscape character of the street.

Therefore, the development is inconsistent with the established neighbourhood character and the desired future character of the locality and is recommended for refusal on this basis.

B2.2 Subdivision - Low Density Residential Areas

The development complies with the following minimum numerical requirements of the control:

Lot 1

- Minimum 27m depth requirement: Provided depth: 38.31m
- Minimum 15m width requirement: Provided width: 15.28m
- Minimum 175m building footprint required: Provided 175m building footprint.

Lot 2

- Minimum 27m depth requirement: Provided depth: 37.94m
- Minimum 15m width requirement: Provided width: 18.29m
- Minimum 175m building footprint required: Provided 175m building footprint.

However, the development necessitates the construction of a driveway to service the rear lot which would require the removal of existing canopy trees which will diminish the landscaped residential and streetscape character of the street. In this respect, the development unreasonably impacts on the natural environment and is considered to be inconsistent with the control which requires:

"Any lot (or lots) are to be capable of providing for the construction of a building which is safe from hazards, does not unreasonably impact on the natural environment, does not adversely affect heritage, and can be provided with adequate and safe access and services".

B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land

The development necessitates the construction of a driveway to service the rear lot which would require the removal of existing canopy trees which will diminish the landscaped residential and streetscape character of the street. In this respect, the development unreasonably impacts on the natural environment and is considered to be inconsistent with the outcome which seeks to retain the *"long-term viability and enhancement of locally native flora and fauna and their habitats"* and the control which requires that *"development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees"*.

B6.1 Access driveways and Works on the Public Road Reserve

Council's Development Engineers are not satisfied with the location or detail provided for the proposed driveway. See Referrals section of this report.

B6.2 Internal Driveways

Council's Development Engineers are not satisfied with the location or detail provided for the proposed driveway. See Referrals section of this report.

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

The application has failed to demonstrate that the proposed driveway and parking access are acceptable. Refer to Development Engineer comments in Referrals section of this report.

C4.7 Subdivision - Amenity and Design

The development necessitates the construction of a driveway to service the rear lot which would require the removal of existing canopy trees which will diminish the landscaped residential and streetscape character of the street.

In this respect the development is considered to be inconsistent with the following outcomes:

- Desired character of the locality.
- Protection of the natural environment.

Furthermore, the development is considered to not comply with the following controls:

- All properties, both existing and proposed, achieve/retain a level of amenity commensurate with the locality and the desired character of the area;
- The impact on the environment of the completed development (including buildings to be constructed on the proposed lots) has an acceptable impact on the environment.

D1.1 Character as viewed from a public place

The development necessitates the construction of a driveway to service the rear lot which would require the removal of existing canopy trees which will diminish the landscaped residential and streetscape character of the street.

In this respect the development is considered to be inconsistent with the following outcomes:

- To achieve the desired future character of the Locality.
- To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment.
- To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.
- The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation.
- To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.

Furthermore, the development is considered to not comply with the following control:

- Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.

D1.4 Scenic protection - General

The development necessitates the construction of a driveway to service the rear lot which would require the removal of existing canopy trees which will diminish the landscaped residential and streetscape character of the street.

In this respect the development is considered to be inconsistent with the following outcomes:

- Achieve the desired future character of the Locality.
- Bushland landscape is the predominant feature of Pittwater with the built form being the secondary component of the visual catchment.

Furthermore, the development is considered to not comply with the following control:

- Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.

D1.8 Front building line

The control requires a 6.5m front setback or the established building line, whichever is the greatest. The established building line is varied, but is generally much greater than 6.5m for dwelling houses. Taking a line from the dwellings on the immediately adjoining neighbours, the established front building line is approximately 27.5m.

The application proposes a 6.5m concept front building line for proposed Lot 1, which would not comply with the established building line. Approval of the proposed subdivision would result in a new front lot that could not reasonably be expected to comply with the front building line control upon development.

Further, the development is assessed as not being consistent with the following underlying Outcomes of the control:

- To achieve the desired future character of the Locality

Comment:

As discussed under clause A4.1 Avalon Beach Locality in this report, the development fails to achieve the desired character of the Avalon locality. Therefore, the development does not achieve this outcome.

- Vegetation is retained and enhanced to visually reduce the built form

Comment:

As discussed throughout this report, the proposal involves the removal of existing established trees on the site and the road reserve, and does not demonstrate that the new lots would be consistent with the desired character in terms of providing for *"houses amongst the trees and not trees amongst the houses"*. Specific built form impacts would need to be assessed at the time of development of the new lot if the subdivision were to be approved. However, it is not considered that the application for subdivision has demonstrated that it could achieve this outcome.

- Vehicle manoeuvring in a forward direction is facilitated

Comment:

Council's Development Engineers have assessed the application and are not satisfied that adequate parking access has been demonstrated on the concept plans. This issue would be assessed at DA stage for development of a new lot if approved. However, at this stage the application is not considered to have demonstrated that it would meet this objective.

- To encourage attractive street frontages and improve pedestrian amenity

Comment:

The proposal would result in a driveway of approximately 40m in length, in place of existing canopy trees. In this regard, the proposal would not encourage attractive street frontages and improve pedestrian amenity.

- To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment

Comment:

As discussed under clause 4.6 Exceptions to development standards in this report, the proposed subdivision and resulting lots will not be consistent with the pattern, size and configuration of existing lots in the locality. As such, the proposal does not achieve this outcome.

Having regard to the above, the development fails to achieve the outcomes of the relevant control detailed above and is recommended for refusal on this basis.

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.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is not satisfied that:

1. The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.1 Minimum Subdivision Lot Size has not adequately addressed and demonstrated that:
 - a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
 - b) There are sufficient environmental planning grounds to justify the contravention.
2. The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2020/0298 for the Subdivision of one lot into two lots on land at Lot 10 DP 12435,25 Kevin Avenue, AVALON BEACH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause 4.6 Exceptions to development standards of Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause A4.1 Avalon Beach Locality of Pittwater 21 Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B2.2 Subdivision - Low Density Residential Areas of the Pittwater 21 Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land of the Pittwater 21 Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B6.1 Access driveways and Works on the Public Road Reserve of the Pittwater 21 Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B6.2 Internal Driveways of the Pittwater 21 Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities of the Pittwater 21 Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4.7 Subdivision - Amenity and Design of the Pittwater 21 Development Control Plan.
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.
11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1.4 Scenic protection - General of the Pittwater 21 Development Control Plan.
12. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1.8 Front building line of

the Pittwater 21 Development Control Plan.