

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0191
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 22 DP 739842, 2 A West Street BALGOWLAH NSW 2093
Proposed Development:	Subdivision of one lot into two Torrens Title lots
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes - Zone R2 Low Density Residential Yes - Zone RE1 Public Recreation
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Peter John McAuley
Applicant:	Peter John McAuley

Application Lodged:	27/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	30/09/2019 to 14/10/2019
Advertised:	Not Advertised
Submissions Received:	17
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 104,882.00
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Executive Summary

The application is for land subdivision of the subject site from one lot into two lots.

Seventeen (17) submissions in objection to the proposal have been received by Council in response to notification of the application. As such, the application is referred to the Northern Beaches Local Planning Panel for determination.

The primary issues raised in the objections to the development are the nature of the proposed vehicle access to the site and associated traffic impacts, the proposed tree removal and biodiversity impacts, and the amenity and drainage issues resulting from future development of the site.

The application is compliant with Manly LEP Clause 4.1 Minimum subdivision lot size control and no objection is raised to the subdivision of the site.

The application has been referred to the following Council teams for assessment and comment: Development Engineering, Traffic Engineering, Roads and Assets, Landscaping, and Biodiversity (Natural Resources).

A number of items of additional information were submitted by the applicant in response to issues raised in the initial Development Engineering referral comments. Despite the additional information provided, Development Engineering do not support the design of the proposed elevated driveway structure over the Council's drainage easement/line located within the road reserve. This issue could not be resolved and is the primary reason for the recommended refusal of the application.

Further reasons for refusal of the application include the provision of an inadequate rear (northern) setback to the indicative building footprint, and the lack of a Construction Traffic Management Plan (CTMP) detailing construction access to the site given the constraints present.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for land subdivision of one lot into two lots as follows:

- Existing Lot 1 - 564m²
- Proposed Lot 2 - 500m²

The proposal also includes the construction of a new suspended driveway from the eastern (lower) section of New Street West, and the relocation of the existing easement adjacent to the northern boundary of the site.

The application identifies a building footprint for the purposes of demonstrating the ability to develop the proposed new allotment for a single dwelling in a compliant and appropriate manner.

The application is also supported by a concept design for a dwelling, however, no consent for the dwelling is sought under this application.

ASSESSMENT INTRODUCTION

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

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

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone RE1 Public Recreation
 Manly Local Environmental Plan 2013 - 4.1 Minimum subdivision lot size
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation
 Manly Development Control Plan - 3.7 Stormwater Management
 Manly Development Control Plan - 4.1.1 Dwelling Density, Dwelling Size and Subdivision
 Manly Development Control Plan - 4.1.1.2 Residential Land Subdivision
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites
 Manly Development Control Plan - 4.4.8 Subdivision

SITE DESCRIPTION

Property Description:	Lot 22 DP 739842 , 2 A West Street BALGOWLAH NSW 2093
Detailed Site Description:	<p>The subject site (2A West Street) consists of one allotment located on the northern side of New Street West.</p> <p>The site is generally regular in shape with a frontage of 54.265m along New Street West and a depth of 20.115m. The site has a surveyed area of 1064m².</p> <p>The site's frontage to New Street West is separated into an upper (western) and lower (eastern) section, separated by a steep unformed road reserve accessible only via a pedestrian staircase.</p> <p>Access to the proposed new lot is via a privately maintained driveway within the public road reserve adjoining Woodland Street, known as New Street West. This road reserve is zoned as RE1 Public Recreation, but is not classified as community or operational land.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing dwelling on the western side of the site.</p> <p>The site slopes approximately 14m from south-west to north-east.</p>

The site contains extensive vegetation including significant trees. The proposed new lot and adjoining road reserve of the lower section of New Street West are densely vegetated with low scrub vegetation and significant trees.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a range of residential development including dwelling houses, dual occupancies, residential flat buildings and multi-dwelling housing.

Map:



SITE HISTORY

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

DA0427/2007 for Land Subdivision into two allotments and new driveway access off New Street, Balgowlah - Withdrawn.

DA0101/2008 for Alterations & Additions to Dwelling including Re-Roofing, Deck Extension, New Balustrade, Internal Modifications, Modification and Extension to Garage Roof - Approved 23/05/2008.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case in accordance with the EP&A Regulation 2000.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</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 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 the provisions of the Building Code of Australia (BCA). This clause is not relevant to this application.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the	(i) Environmental Impact

Section 4.15 Matters for Consideration'	Comments
likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development based on the information available to Council, specifically in relation to the proposed driveway design/location.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Council's Manly Policy: D100 Drainage Easements- Construction over Drainage Easements, and has not provided adequate detail in relation to management of construction traffic to/from the site. As such, the proposal 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 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 17 submission/s from:

Name:	Address:
Withheld	MANLY VALE NSW 2093
Malcolm John Fisher	37 King Street MANLY VALE NSW 2093

Name:	Address:
Ms Vanessa Lansdown	50 Upper Clifford Avenue FAIRLIGHT NSW 2094
Mr Grant Tyson Brits	9 Steinton Street MANLY NSW 2095
Mr Gary Keith Brits Mrs Jeanette Brits Kara Brits	37A New Street BALGOWLAH NSW 2093
Joyce Fernandes	860 The Horsley Drive SMITHFIELD NSW 2164
Jonathan Hirsowitz	7 Hay Street VAUCLUSE NSW 2030
Katie Mazzoni	6a Glencoe Street SUTHERLAND NSW 2232
Mateusz Blaszczakiewicz	1 / 12 Crown Road QUEENSCLIFF NSW 2096
Angel Fernandes	
Mrs Ellen Singleton	5 / 105 A Woodland Street BALGOWLAH NSW 2093
Mrs Birgitt Patricia Saunders	101 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mr Breckon Kemble Jones	37 New Street BALGOWLAH HEIGHTS NSW 2093
Mrs Joanne Judith Slip	6 / 4 West Street BALGOWLAH NSW 2093
Mr Nicholas O'Brien	1 / 4 West Street BALGOWLAH NSW 2093
Mr Paul Timothy Jones Mrs Susan Margery Jones	4 / 105 A Woodland Street BALGOWLAH NSW 2093
Mr Olaf Theodorus Lambooy Mrs Sally-Ann Lambooy	5 / 4 West Street BALGOWLAH NSW 2093

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

- Impact on wildlife and habitat on the site and adjoining road reserve
- Noise and traffic impacts of construction
- Ongoing traffic/parking impacts
- Clearing of block / vegetation impact / tree removal
- Access to site via New Street West & compensation
- Transfer of land from Crown to Roads Authority/Council
- Change in character of area
- Acquisition of land from Council for access
- Proposed building footprint (superseded design)
- Visual bulk
- Privacy
- Sunlight access
- Drainage and flooding issues
- Proposed building footprint (amended)
- Vehicle noise and light - No. 4 Woodland Street

The matters raised within the submissions are addressed as follows:

- Impact on wildlife and habitat on the site and adjoining road reserve
Comment:
The proposed development was referred to Council's Landscaping and Biodiversity Officers for assessment, with no objections raised subject to recommended conditions of consent. The

subject site is not identified on Council's Terrestrial Biodiversity Map and therefore is not strictly subject to biodiversity assessment under the Manly LEP. Regardless, Council's Biodiversity Officer completed an assessment of the application, commenting that key impacts relate to the proposed removal of native trees, and that the proposal will not result in significant impact to biodiversity.

- Noise and traffic impacts of construction

Comment:

Construction works are required to comply with standard hours within which audible works can take place in order to maintain the amenity of the surrounding properties. If the application was to be recommended for approval, a Construction Traffic Management Plan (CTMP) would be required in relation to the development. The lack of a CTMP is included as a reason for refusal.

- Ongoing traffic/parking impacts

Comment:

The applicant has submitted a Traffic Report in relation to the proposed development. Council's Traffic Engineer has completed an assessment of the application and raised no objections on the grounds of traffic/road network impacts.

- Clearing of block / Vegetation impact / tree removal

Comment:

Council's Landscape Officer has completed an assessment of the proposal and the Arboricultural Impact Assessment accompanying the application. No objection was raised to the proposed tree/vegetation removal by Council's Landscape or Biodiversity Officers.

- Access to site via New Street West and compensation

Comment:

Access to the site via West Street or the western section of New Street West is impractical given the context of the site. Access via the New Street West driveway over Council land is practical and will not unreasonably impact access to adjoining properties, as discussed in the Traffic Report and Council's Traffic assessment. The New Street West driveway is a privately maintained driveway on public road under Council control. As such, if the application was to be approved and permission for access via this driveway granted, the applicant may be liable to contribute to the maintenance/upkeep of the driveway.

- Transfer of land from Crown to Roads Authority/Council

Comment:

The part of Crown public road known as New Street West between West Street and Woodland Street was transferred from transferred from to the Roads Authority (Northern Beaches Council) under the Roads Act 1993 as per Government Gazette of the State of New South Wales Number 144 dated 21 December 2018 [n2018-4338].

- Change in character of area

Comment:

The proposed subdivision is for the purpose of residential development. The applicant has also provided a preliminary dwelling design that is considered to maintain the existing character of the surrounding area and broader R2 Low Density Residential zone.

- Acquisition of land from Council for access

Comment:

The proposal does not require the acquisition of any land from Council in order to access the proposed new lot. The proposed driveway access extends from the existing New Street West driveway across the Council road reserve and to the site. This access is generally consistent

with the anticipated access of driveways accessing private land. Council's Road Reserve referral specifies that a Licence for a suspended structure would be required in relation to the proposed driveway, as per the former Manly Council policy.

- Proposed building footprint (superseded design)
Comment:
The east-west orientated building footprint submitted with the application has been amended. The applicant submitted a revised footprint and preliminary dwelling design that has been considered as part of this assessment.
- Visual bulk
Comment:
The preliminary dwelling design is assessed in detail in this report. The dwelling design is not excessive in bulk or scale and is sufficiently set back to minimise visual bulk and ensure the provision of adequate physical separation from adjoining properties.
- Privacy
Comment:
The preliminary dwelling design is assessed in detail in this report. However, no consent for a dwelling is sought as part of this application and further detail in relation to the dwelling design would be required in order to make an accurate assessment of privacy impacts.
- Sunlight access
Comment:
The preliminary dwelling design is assessed in detail in this report. However, no consent for a dwelling is sought as part of this application and further detail in relation to the dwelling design would be required in order to make an accurate assessment of sunlight access/overshadowing impacts.
- Drainage and flooding issues
Comment:
Council's Development Engineers raised no objection to the proposal in relation to impact on drainage/overland flow paths on the site. Further stormwater detail would be required in relation to any future dwelling construction.
- Proposed building footprint (amended)
Comment:
The proposed building footprint and preliminary dwelling design are considered to be generally reasonable in the context of the site, subject to an increase to the northern (rear) setback. A detailed assessment of the footprint and dwelling design is completed under Manly DCP Clause 4.1.4.
- Vehicle noise and light - No. 4 Woodland Street
Comment:
The proposed vehicle access is located on the opposite side of the site to No. 4 Woodland Street and would be obscured by a future dwelling constructed on the site. Furthermore, vehicle access consistent with the future residential use is not considered to result in unreasonable disruption/amenity impacts to surrounding properties.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and specifically: 3.3.2 Preservation of Trees or Bushland Vegetation; 4.1 Residential Development Controls, and 4.4.8 Subdivision.</p> <p>The subdivision development works will require the removal of existing trees numbered in the Arboriculture Impact Statement prepared by The Ents Tree Consultancy as Trees 3, 5, 7, 8 and 12.</p> <p>The proposal retains existing trees of High retention value including Trees 17, 18, 18a, 19, 20 and 21, to satisfy the requirements of Manly DCP2013, including clause 4.4.8.2 Prevailing subdivision pattern and natural features where the proposed subdivision has regard to retention of existing vegetation on site, and clause 3.3.2 Preservation of Trees or Bushland Vegetation in particular. These trees shall be conditioned to ensure they are protected during subdivision works and any ongoing works.</p> <p>Additionally existing Trees 6 and 11 are assessed as dead, and do not require approval for removal.</p>
NECC (Bushland and Biodiversity)	<p>Vegetation on the site comprises a degraded form of Coastal Sandstone Gully Forest. Key biodiversity impacts relate to proposed removal of existing native trees. Council's Senior Landscape Architect has recommended conditions of consent for protection of significant trees. It is considered that the proposal will not have a significant impact to biodiversity, subject to recommended conditions.</p>
NECC (Development Engineering)	<p><u>2nd engineering referral response</u></p> <p>The applicant provided additional information to address the previous concerns.</p> <p>Development Engineering and Stormwater & Floodplain Engineering team have reviewed the provided information. However, the proposed driveway does not comply with Council's Manly Policy: D.100 Drainage Easements- Construction over Drainage Easement.</p> <p>The proposed suspended driveway will result in Council incurring additional costs by specialised equipment or construction techniques in order to maintain or upgrade Council's drainage line. It is not acceptable to Council.</p> <p>The applicant shall either re-design an on-ground driveway to comply with the policy or relocate the affected drainage line at his/ her cost.</p> <p>In relation to the overland flow, the proposed floor level of the building shall be set at 650mm above the existing surface in accordance with the submitted overland flow report. In order to ensure protection of the</p>

Internal Referral Body	Comments
	<p>dwelling, the minimum floor level must be marked on proposed subdivision plan.</p> <p>The Item 2-4 are addressed.</p> <p>As above, Development Engineering and Stormwater & Floodplain Engineering team cannot support the application.</p> <p><u>1st Referral Engineering</u></p> <p>Development Engineering has reviewed the application. However, Development Engineering cannot support the application as the below reason:</p> <p>1) Council pipe line: A 450 mm diameter concrete pipeline is located on the proposed driveway location. The consultant proposed to excavate about 1m below the existing surface and install some footings to install the proposed driveway. It may impact to Council's pipeline. As such, the applicant is required to submit the following details:</p> <ul style="list-style-type: none"> • Accurately locate, confirm dimensions including depth and plot to scale Council's stormwater pipelines and associated infrastructure on the DA site plans that outline the proposal. This should be carried out by a service locating contractor and registered surveyor. (Evidence of methodology used for locating stormwater system should be provided) • All structures are to be located clear of any Council pipeline in horizontal and vertical direction. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Manly Policy: D.100 Drainage Easements- Construction over Drainage Easement. • Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance with Council's policy are to be submitted <p>2) Overland flow path: The future building footprint and proposed driveway are located on the existing natural water course and the overland flow path via the property. These structures will impact the natural overland flow regime traversing the property. An overland flow report shall be submitted to demonstrate that there are no adverse effects including diversion of overland flow paths and flooding of upstream and downstream properties. It is required to determine the 1 in 100 year ARI water level potentially traversing the property and the future floor level and garage level are to have a freeboard of 500 mm above the 1 in 100 year water surface level. The Hec-Ras computer model is preferred for this application.</p>

Internal Referral Body	Comments
	<p>3) Utilities: There are some Sydney Water sewer lines and mains are located on the proposed driveway areas. As such, an utility service survey shall be undertaken. The utility information must be plotted on the driveway cross sections if they are found in the survey. Also, a letter form the utility authority confirming that the satisfactory arrangement have made for the proposed development.</p> <p>4) Geotechnical report: A geotechnical report on the affected road reserve areas shall be submitted for assessment due to the proposed excavation and structures.</p> <p>As the above, Development Engineering cannot support the application.</p>
Road Reserve	Development Engineering and Certification to provide conditions in relation to driveway details. Licence for suspended structure to be required as per former Manly Council policies
Traffic Engineer	<p><u>Traffic Engineer Comment:</u></p> <p>The proposal is for subdivision of 1 lot to 2 lots. The existing driveway located on the western side of the cul-de-sac in New St W will be used by the existing dwelling (Lot1) and a new elevated driveway will be constructed on the eastern side providing access to the Lot 2.</p> <p>The traffic generation of the proposal is considered negligible and given the location of the driveway in a cul-de-sac the impact of turns in and out of the driveway will not have adverse impact on the road network. Therefore, no objection is raised on the proposal on traffic grounds subject to provision of a swept path analysis demonstrating the vehicles turns in and out of the driveway and also the driveway grades to satisfy the development engineering requirements.</p> <p><u>Planning Comment:</u></p> <p>If the application was to be recommended for approval, suitable conditions of consent would be included requiring the provision of a swept path analysis and driveway grades demonstrating compliance with the relevant engineering requirements as per the above comment.</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.
Aboriginal	The proposed development was referred to the AHO, with the following comments received in response:

External Referral Body	Comments
Heritage Office	<p><i>"There are known sites in the Balgowlah area. However, no sites are recorded in the current</i></p> <p><i>If areas of in situ sandstone outcrop are in the proposed development area or revealed during heritage professional prior to any further development. If there are no existing sandstone outcrops and the Aboriginal Heritage Office would not foresee any further Aboriginal heritage constraints</i></p> <p><i>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council should be notified.</i></p> <p>If the application were to be recommended for approval, suitable conditions based on the above should be included.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	500m ²	Lot 1: 564m ²	N/A	Yes

		Lot 2: 500m2	N/A	Yes
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Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
4.1 Minimum subdivision lot size	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone RE1 Public Recreation

The proposed extension of the existing vehicle access known as New Street West is development for the purpose of a road, as defined by the Roads Act. Roads are a permissible use within the RE1 Public Recreation zone under the Manly LEP. The RE1 zoned section of New Street West is not classified as Community Land or Operational Land, and is a public road reserve under Council ownership. Section 6 (1) of the Roads Act provides the owner of land adjoining a public road the right to access across the boundary between the land and the public road.

Notwithstanding this, the connection from the site boundary of the proposed new lot to the existing road surface of New Street West over public land/road reserve is subject to further approval under Section 139 of the Roads Act. Please also see further comments provided by Council's Development Engineers in relation to objection to the proposed driveway structure.

4.1 Minimum subdivision lot size

Compliance with control:

The proposed subdivision results in two lots in compliance with the minimum lot size control of 500m2.

Merit consideration:

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

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

(a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,

Comment:

The proposed subdivision complies with the minimum lot size control and there is no uniform subdivision pattern in the area to warrant refusal of the application. The existing subdivision pattern of the locality is varied and changes orientation at the intersection of West Street, New Street W, and Lewis Streets. The comparable lots to the north of the subject site, with an east-west orientation

between West Street and Brimbecomb Park, have been Torrens title and/or strata subdivided to contain multiple dwellings. Further, the adjoining property to the east, No. 105A Woodland Street (approx. 3238m²), has been strata subdivided to contain 8 multi-dwelling housing units. As such, the proposed further subdivision of 2A West Street is considered to maintain a consistent density with the surrounding area.

(b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,

Comment:

The proposed subdivision of the subject site for the purpose of residential development will not unreasonably alter the character of the locality or streetscape. As discussed above, there is no identifiable prevailing subdivision pattern against which to consider the development.

(c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,

Comment:

Based on concerns raised by Council in relation to the above, the applicant was requested to provide an indicative dwelling design in order to demonstrate the development potential of the site. While the application is recommended for refusal due to engineering/Council infrastructure impacts, assessment of the indicative dwelling design concluded that development of the site is reasonable given the proposed lot size and site constraints. See further discussion of the preliminary dwelling design/siting against the Manly DCP Development Controls under Part 4.1.

(d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.

Comment:

The proposed subdivision is considered to maximise the use of existing infrastructure and local facilities while maintaining consistency with the surrounding area.

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

No significant excavation works are proposed as part of this application.

6.2 Earthworks

No significant earthworks are proposed.

6.4 Stormwater management

Council's Development Engineers raised no objection to to the proposal in relation to impact on drainage/overland flow paths on the site. Further stormwater detail would be required in relation to any future dwelling construction.

Manly Development Control Plan

Built Form Controls

There are no development controls under Part 4 to consider as part of this assessment. However, consideration of indicative dwelling plans submitted with the application has been undertaken. See discussion of this consideration under 4.1 Residential Development Controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The proposed development is generally consistent with the existing residential developments on the southern side of New Street West.

3.3.2 Preservation of Trees or Bushland Vegetation

The proposal was referred to Council's Landscape Officer for assessment against the relevant Manly DCP controls. No objection was raised to the development, subject to conditions of consent provided.

3.7 Stormwater Management

Council's Development Engineers raised no objection to to the proposal in relation to impact on drainage/overland flow paths on the site. Further stormwater detail would be required in relation to any future dwelling construction.

4.1.1 Dwelling Density, Dwelling Size and Subdivision

The proposed subdivision is considered to be consistent with the objectives of this Clause. See the discussion against Manly LEP Clause 4.1 in this regard.

4.1.1.2 Residential Land Subdivision

The proposed subdivision complies with the requirements of this Clause. The proposed new residential lot is 500m², but the applicant was directed to provide a preliminary dwelling design to demonstrate that this lot could successfully accommodate a dwelling in compliance with the Manly DCP controls. The preliminary dwelling design is considered to sufficiently demonstrate that reasonable future development of the new lot is possible, subject to minor amendment of the indicative building footprint (see discussion of Manly DCP Development Controls under Part 4.1). However, the application is not supported due to impacts on Council's infrastructure resulting from the proposed driveway design.

Council's Development Engineers concluded that additional information provided by the applicant demonstrates that the proposed would result in no unreasonable impact on drainage/overland flow paths on the site.

4.1.4 Setbacks (front, side and rear) and Building Separation

Compliance with control:

Whilst the dwelling is conceptual only and is not part of the application, an assessment of compliance with the Manly DCP setback controls is undertaken to understand whether an appropriate design for the site is possible.

Assessment of the proposed setbacks/building envelope has taken into account the context of the site and adjoining properties and the layout of the proposed new lot being generally square in shape, rather than a typical rectangular residential lot. Given the layout/dimensions of the site and vehicle/street access, the southern boundary is determined to be the lot frontage, with the rear setback being the northern boundary, and eastern and western boundaries being side setbacks. It is noted that no elevation drawings or shadow diagrams have been provided in order to complete a more thorough assessment of the application. However, the information available as part of the preliminary dwelling design is considered to be sufficient to complete the necessary assessment in relation to this subdivision application.

The proposed ground floor front (southern) setback of 2.3m is non-compliant with the 6m control. The proposed first floor front setback is 6.5m. The proposed front setback of 2.3m to the ground floor is considered to be acceptable given the exceptionally wide road reserve and physical separation at the front of the site. The proposed first floor front setback of 6.5m complies with the 6m control and is sufficient.

The proposed ground floor eastern side setback is 2.5m (garage) and the western side setback is 2.7m. The proposed first floor eastern side setback is 13.5m and western side is 5.3m. The proposed eastern and western side setbacks appear to comply, despite the preliminary dwelling design not including the necessary elevation drawings required to calculate the proposed wall heights and associated setbacks. The side setbacks provide significant physical separation from the adjoining properties, with additional separation provided by the Council reserve adjoining the lower side of the site to the eastern boundary.

The proposed rear (northern) setback to the ground and first floors is 1.2m. The proposed rear setbacks to the ground and first floors are considered to be inadequate. A variation to the 8m control would be considered acceptable by Council given the site dimensions and the fact that the northern rear boundary of the subject site adjoins the southern side boundary of No. 4 West Street. If the application were to be recommended for approval, the indicative building envelope would be conditioned to be set back a minimum of 3m at ground floor level and a minimum of 5m at first floor level.

A reduction to the proposed first floor front or eastern/western side setbacks may be considered by Council in order to provide an increased rear setback as discussed above.

Merit consideration:

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

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Objective 3) To promote flexibility in the siting of buildings.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

The proposed front and side setbacks of the preliminary dwelling design are considered to be generally acceptable in relation to the objectives of this Clause. As discussed under the *Compliance with control* discussion, further detail of the dwelling design is required to complete a full assessment of the proposal against the above objectives. This information would be required to be submitted with any subsequent application to construct a dwelling on the site.

As assessed above, the proposed rear setbacks to the ground and first floors are inadequate and require revision. As such, the proposal is inconsistent with the objectives of this Clause, and this is included as a reason for refusal.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The preliminary dwelling plans provide car parking generally in compliance with Clause 4.1.6. However, Council's Development Engineers do not support the proposed suspended driveway structure over a Council easement and drainage line. See the Development Engineering referral comments for further detail in this regard. As such, the proposed driveway design is unacceptable and is included as a reason for refusal.

4.1.8 Development on Sloping Sites

The preliminary dwelling design is considered to be appropriately modulated to respond to the slope of the site. The proposed suspended driveway is located above ground level, but is not supported due to its design over Council's drainage easement/line. Geotechnical assessment of the proposed driveway has been undertaken, however further geotechnical assessment of the site would be required as part of any application for a new dwelling.

4.4.8 Subdivision

The proposed development is considered to comply with the requirements of this Clause. The proposed subdivision will not unreasonably impact the existing vegetation, topography, views or scenic and natural values of the site. The subdivision pattern and land uses in the surrounding area varies significantly and as such, no objection is raised to the subdivision of the site. This matter is discussed in detail in the assessment report, particularly against LEP Clause 4.1 and DCP Clause 4.1.1.2.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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;
- Manly Local Environment Plan;
- Manly 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

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

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 DA2019/0191 for the Subdivision of one lot into two Torrens Title lots on land at Lot 22 DP 739842,2 A West Street, BALGOWLAH, 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 provisions of the Environmental Planning and Assessment Act 1979
2. 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 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) of the Manly Development Control Plan.
4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.