

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1334
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Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 4 DP 30205, 50 Condoover Street NORTH BALGOWLAH NSW 2093
Proposed Development:	Subdivision of one lot into two lots (Community Title)
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Susan Grace Sands Adrian Whyte McGregor
Applicant:	Adrian Whyte McGregor

Application Lodged:	06/08/2021
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	20/08/2021 to 03/09/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 86,130.00
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PROPOSED DEVELOPMENT IN DETAIL

The application proposes the following works:

Community Title Subdivision of one (1) Lot into three (3) Lots configured as;

- Proposed Lot 1: 438 sqm (minimum dimensions 13.7m (street frontage) x 20.9m (widest point at rear))
- Proposed Lot 2: 386.2 sqm (minimum dimensions 7.135m (street frontage) x 19.9m (widest point at the rear))
- Propose Lot 3: 23.8sqm (Community Property with minimum dimensions 26.06m x 1.2 (widest point))

- Demolition of the existing dwelling house, carport, paving, and ancillary site preparation works
- Construction of a driveway for Lot 1 and 2
- Connections for infrastructure services and ancillary site works.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential

Warringah Local Environmental Plan 2011 - 4.1AA Minimum subdivision lot size for community title schemes

Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land

Warringah Development Control Plan - C1 Subdivision

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - E6 Retaining unique environmental features

SITE DESCRIPTION

Property Description:	Lot 4 DP 30205 , 50 Condoval Street NORTH BALGOWLAH NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southwestern side of Condoval Street.</p> <p>The site is irregular in shape with a primary frontage of 8.32m along Condoval Street, a secondary frontage of 13.715m to Kimo Street and a depth of 47.195m. The site has a surveyed area of 847.2m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two storey dwelling house</p>

located centrally on the site, with a detached carport towards the front of the site.

The slope of the site is measured at 33.8%, falling approximately 15.93m from the rear (Kimo Street) to the front boundary (Condoever Street).

The site contains a modified landscape/bushland setting, with vegetation consisting of large native canopy trees and rock outcrops to the rear of the site and lawned turf areas toward the front of the site.

Adjoining and surrounding development is characterised by low-density detached residential dwellings of varying architectural styles within a landscaped setting. Condoever Reserve is located on the opposite side of Condoever Street, towards the north of the subject site.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant development applications:

- Pre-lodgement Meeting **PLM2021/0008** was held on 2 February 2021 for the demolition works and subdivision of one lot into two lots. The meeting notes conclude that proposal demonstrated significant non-compliance to the requirements of Clause 4.1 – Minimum Subdivision Lot Size under the Warringah Local Environmental Plan 2011. Concern was also raised in regards to the potential non-compliances that the establishment of future dwellings on the site would achieve. It was concluded that the proposal could not be supported and the applicant was advised not to submit a Development Application for the subdivision of the property.
- Development Application **DA2019/1122** for the alterations and additions to a dwelling house

was approved on the 14 January 2020.

- Development Application **DA2019/1109** for the alterations and additions to a dwelling house was rejected by Council on the 19 October 2019 due to a Statement of Environment Effects not being submitted with the application.
- Pre-lodgement Meeting **PLM2019/0156** was held on 15 August 2019 for the alterations and additions to a dwelling house. The meeting notes state amendments were required to be undertaken to the design to ensure greater consistency with the controls and objectives of the Warringah DCP, particularly with regards to the side boundary envelope and side boundary setback requirements. It was concluded an amended proposal may be supported.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&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>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration	Comments
	<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 matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic 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, in so far as the proposal represents inappropriate and overdevelopment of the site that is not consistent with the established subdivision character of the surrounding area.
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 planning controls 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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and

Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application (prepared by Bushfire Consultancy Australia, dated 20/7/2021).

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report , along with the conditions from the NSW RFS would have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 20/08/2021 to 03/09/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Lewis Robert Hugh Seelenmeyer	26 Kimo Street NORTH BALGOWLAH NSW 2093

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

- **Lot size consistency**
- **Minimum Lot size of a Community Title Subdivision**
- **Compliance with the Warringah Development Control Plan 2011 (WDCP)**

The matters raised within the submissions are addressed as follows:

- ***Concern that the Lot size and density is not consistent with the R2 Low Density Residential zone.***

Comment:

This issue has been addressed within this report under the detailed considerations pursuant to the Warringah LEP 2011 for the objectives of the R2 Low Density Residential Zone. In summary, it is agreed that the proposal is inconsistent with the zone objective "*to ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah*". More detailed consideration of issues with the subdivision are made under the heading Part C1 Subdivision, addressing requirements of the Warringah DCP 2011.

This issue cannot be addressed by conditions and has determining weight as a reason for refusal of the application.

- ***The proposal Lot size will contribute to an overdevelopment and unsuitable for the natural site constraints on the land.***

Comment:

A number of critical issues are created by the proposal, including density within the available buildable area on the site. Particular issues are raised in reference to the creation of the Lots, and the suitability of the land to accommodate the extent of associated building works. The application does not demonstrate impacts of the subdivision on the sites environmental features will be minimised.

Concerns were raised with the applicant that the proposal was not supportable and the issues raised regarding the subdivision are symptomatic of an unsuitable design response to enable the orderly development of the land for future housing.

In summary, this issue cannot be addressed by conditions and warrants reason for refusal of the application.

- ***Concerns where raised in regards to the the ability of the future houses to comply with required WDCP built form controls and the impact of the future houses on surrounding sites.***

Comment:

Whilst the application is for subdivision only, indicative footprint have been provided for the new Lots at 137.8sqm for Lot 1 and 112sqm for Lot 2. The estimated building footprints are shown to be able to be located entirely within the required setback areas. However, the constrained Lots do not demonstrated areas for access, decking, or outdoor recreational areas, which would significantly reduce the available landscape area and is not in harmony with the established subdivision pattern consisting of predominately larger lot sizes with larger landscaped areas.

The proposed subdivision to create lot sizes of 438 sqm and 386.2 sqm constitute overdevelopment. As a result the site is unsuitable particularly as the proposed dwellings on the site may be unable to comply with the built form controls under WDCP 2011 due to a constrained Lot size.

In summary, whilst the specific building design of the future dwellings are to be be addressed by future development applications for housing on the new Lots, it is agreed that significant non-compliances may be created by the proposed Lot sizes with this concern warranting refusal of the application.

- ***Concern has been raised in regards to the Lots sizes, the inconsistency with the minimum Lot size within the R2 zone of the Warringah Local Environment Plan 2011.***

Comment:

The application seeks to rely on clause 4.1AA Minimum Subdivision lot size for Community Title Schemes of the Warringah Local Environment Plan 2011. Whilst it is agreed the minimum lot size standard does not apply to a Community Title Subdivision in a R2 zone, the proposal however does not satisfy the objective of the R2 Low Density zone, and creates significant variations to the other development controls which will set an undesirable precedent against Part C1 Subdivision of the Warringah Development Control Plan 2011.

In summary, the minimum Lot sizes does not apply to a Community Title Subdivision in a R2 Low Density Residential zone and this specific concern is not a reason for refusal. However, the proposal does not satisfy the objective of the R2 Low Density zone which is considered a reason for refusal.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposal is for the demolition of existing structures, and for a Community Title land subdivision from 1 lot into 2 lots, each with their own street frontage and separate vehicle access. A community lot (Lot 3) is proposed to accommodate inter-allotment drainage, and if necessary, utility services, from Lot 1 to Condoover Street.</p> <p>The application is assessed by Landscape Referral against Warringah Development Control Plan 2011, including but not limited to the following clauses:</p> <ul style="list-style-type: none"> • C1 Subdivision • E1 Preservation of Trees or Bushland Vegetation <p>The existing site is a managed suburban garden with prominent landscape natural features such as rock outcrops and ledges retained by the subdivision proposal. One existing tree (T4 Port Jackson Fig) is found along the common boundary with 52 Condoover Street, and otherwise existing trees are located within adjoining properties and within the road reserve. The subdivision proposal does not impact upon existing trees, and a Arboricultural Impact Assessment is provided with recommended tree protection measures.</p> <p>The proposed stormwater easement identified as Lot 3 under the subdivision proposal is located along the boundary adjoining 52 Condoover Street, and excavation for pits and lines are to be aligned within the easement zone to not impact upon neighbouring vegetation.</p> <p>Landscape Referral raise no objections to the subdivision proposal.</p>
NECC (Development Engineering)	<p>Amended comments (24/10/21)</p> <p>The engineering plans submitted with the proposed subdivision application which include the driveway profiles to Lots 1 & 2 and the proposed stormwater drainage easement /line (Lot 3) are generally satisfactory.</p> <p>Previous comments</p> <p>The proposed 3 lot subdivision is not supported as the lots sizes are undersized and not in accordance with the R2 zone minimum being 600m².</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid who provided a response on the 2 October 2021 stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations would be included as a condition of consent if the application were to be approved.</p>
NSW Rural Fire Service – local branch (s4.14 EPAA)	<p>The proposal was referred to NSW Rural Fire Service who provided a response on the 28 September 2021 stating that the proposal is acceptable subject to compliance with the relevant the General Terms of Approval, under Division 4.8 of the Environmental Planning and</p>

External Referral Body	Comments
	Assessment Act 1979, and a Bush Fire Safety Authority, under section 100B of the Rural Fires Act 1997.

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.

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 who provided a response on the 2 October 2021 stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations would be included as a condition of consent if the application were to be approved.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
4.1AA Minimum subdivision lot size for community title schemes	No minimum Lot size for R2 zone	Proposed Lot 1: 438 sqm Proposed Lot 2: 386.2 sqm Propose Lot 3: 23.8sqm (Community Property)	-	Yes

Compliance Assessment

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

Detailed Assessment

Zone R2 Low Density Residential

The application provides an unbalanced subdivision pattern, and creates non-compliant built form that is not consistent with the following clauses:

Clause(2) - (d) in relation to residential development, to:

- (i) protect and enhance the residential use and amenity of existing residential environments, and*
- (ii) promote development that is compatible with neighbouring development in terms of bulk, scale and appearance*

(f) in relation to environmental quality, to:

- (i) achieve development outcomes of quality urban design, and*
- (iv) ensure that development does not have an adverse effect on streetscapes and vistas, public places, areas visible from navigable waters or the natural environment.*

The newly created lots are inconsistent with the predominate pattern, size and configuration of existing lots in the locality, and are not in harmony with the established subdivision pattern consisting of predominately larger lot sizes with larger landscaped areas.

Whilst there are examples of some smaller Lot sizes within the surrounding area of the subject site (for example, 2 and 2A Marlee Street and 44, 44A, 54, and 54A Conover Street) these were established at

the original subdivision of the area and/or dual occupancy subdivision, all of which occurred well prior to the gazettal of WLEP 2011. It is important to note, that many of the surrounding smaller Lots displaying larger Lot sizes than proposed Lot 2.

Furthermore, there are a greater proportion of lots which have areas of between 501sqm and 600sqm and far more between 601sqm and 700sqm.

The proposed subdivision is inconsistent with Councils strategic intention to establish minimum Lot size within the R2 zone, which will have cumulative adverse impact on the ability to protect those values within the R2 zone leading to greater loss of natural and biodiversity value and the natural environment landscape character of the land.

As a result, the subdivision proposal is not supported.

4.1AA Minimum subdivision lot size for community title schemes

The application seeks to rely on clause 4.1AA Minimum Subdivision lot size for Community Title Schemes of the Warringah Local Environment Plan 2011 to avoid the minimum lot size standard of 600sqm for the R2 zone, and the submission of a clause 4.6 variation to demonstrate that the variation to the development standard is justifiable in the specific circumstance.

Whilst it is agreed the minimum lot size standard does not apply to a Community Title Subdivision within a R2 zone, the proposal however does not satisfy the objectives of the R2 Low Density zone, and creates significant variations to the other development controls which will set an undesirable precedent against Part C1 Subdivision of the Warringah Development Control Plan 2011.

Community Title Subdivisions generally includes includes featured common areas such as walkways, driveways, landscaped areas, or recreational facilities that are maintained by a community association. The common property proposed as part of the subdivision (Lot 3) is 1.0m - 1.2m in width and 26.7m in length over sloping topography to be utilised as the inter-allotment drainage easement. As a result, Lot 3 is a generally a requirement under the stormwater Management for the site rather than common property that provides benefit to the community.

As a result, the proposed subdivision complies with Clause Clause 4.1AA and is not a reason for refusal.

6.4 Development on sloping land

A Preliminary Geotechnical Assessment has been prepared by White Geotechnical Consultants, dated 19 July 2021, was prepared as supporting documentation for the subdivision and potential construction of dwelling houses on Lot 1 and Lot 2. This report and its recommendations will apply to the demolition works to ensure there is no adverse impacts to the surrounding properties resulting from the proposal on sloping land.

Any future dwelling houses would be subject to new development applications. As a result, specific Preliminary Geotechnical Reports would be undertaken and submitted as required documentation for the development application for any future dwelling house.

Warringah Development Control Plan

Built Form Controls

There are no dwellings proposed as part of this application. As a result, there are no specific Built Form controls to measure against.

However, an assessment of the indicative house plans and whether they are capable of complying with the built form controls pursuant to Part B of the Warringah DCP 2011 is undertaken below.

Lot 1 - indicative house plan (Dwelling: 137.8sqm)

An estimated building footprint of approx. 137sqm for Lot 1 is shown to be able to be located entirely within the required setback areas. However, whilst an adequate landscaped area is demonstrated, areas for access, decking, or outdoor recreational areas not been demonstrated and could significantly reduce the available landscape area.

Lot 2 - indicative house plan (Dwelling 112sqm)

An estimated building footprint of approx. 112sqm for Lot 2 is shown to be able to be located entirely within the required setback areas. However, whilst an adequate landscaped area is demonstrated, the undersized dwelling plan and steep topography, combined with areas for access, decking, or outdoor recreational areas not been demonstrated and could significantly reduce the available landscape area.

Lot 3 - Community Lot with no dwelling.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
C1 Subdivision	No	No
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	No
C4 Stormwater	Yes	Yes
C8 Demolition and Construction	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	No	No
E10 Landslip Risk	Yes	Yes

Detailed Assessment

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	<p>R2 Low Density Residential zone requirements:</p> <p>Proposed new allotments:</p> <p>a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m²</p>	<p>Lot 1 demonstrates the following non-compliance:</p> <ul style="list-style-type: none"> • Minimum depth: 21m (variation up to 22%) • Minimum building area: 137.8sqm (variation of 8%) <p>Lot 2 demonstrates the following non-compliance:</p> <ul style="list-style-type: none"> • Minimum width: 7.135 metres (up to 45%) 	No - Refer to discussion below this table

		<ul style="list-style-type: none"> • Minimum depth: 26.691 metres (0.3%) ; and • Minimum building area: 112sqm (variation 25.3%) 	
Access	Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.	The proposal includes an access handle to both allotments, Lot 1 and Lot 2. These have been assessed by Council's Development Engineers as satisfactory.	Yes
	Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.	The configuration of the subdivision pattern and driveway layout essentially results in two private driveways from different street frontages.	Yes
	Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.	The width of the driveways access can satisfactorily accommodate the provision of services.	No
	<p>Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.</p> <p>Driveways in excess of 200 metres will not be allowed for residential development.</p> <p>Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.</p> <p>Passing bays should have regard to sight conditions and minimise vehicular conflict.</p> <p>Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay.</p> <p>Rights-of-carriageway should be located so as to accommodate all</p>	<p>However, Part H, appendix 1 Car Parking Requirements states <i>"Community title subdivisions are to include provision for one visitor parking space per five dwellings or part thereof. These spaces are to be located within the neighbourhood property lot."</i></p> <p>Due to the configuration of Lot 3 a car parking space cannot be provided on the proposed community Lot, due to the constrained size, topography and reduced widths.</p>	

	<p>vehicle turning facilities.</p> <p>Width of accessways are to be as follows:</p> <table><tr><td>Number of lots to be serviced</td><td>Width of clear constructed accessway (m)</td></tr><tr><td>1 - 5</td><td>3.5</td></tr><tr><td>6 - 10</td><td>5.0</td></tr><tr><td>in excess of 10</td><td>Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)</td></tr></table> <p>Provision of services in rights of carriageway are as follows:</p> <table><tr><td>Number of lots to be serviced</td><td>Additional width to be provided in Right of Carriageway (m)</td></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>	Number of lots to be serviced	Width of clear constructed accessway (m)	1 - 5	3.5	6 - 10	5.0	in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)	Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)	Up to 3 lots	0.5	4 or more lots	1.0		
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Up to 3 lots	0.5																
4 or more lots	1.0																
Design and construction	<p>All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant</p>	<p>Construction</p> <p>The proposal is reasonable in providing the required details for the On Site Detention and stormwater drainage design, as a result the proposal is supported by Councils Development Engineers.</p> <p>Design</p> <p>The creation of Lots will result in two (2) Lots, with two new dwellings to be built on the site at a later time.</p>	<p>Yes</p> <p>No - Refer to discussion below this table</p>														

	<p>Australian Standards.</p> <p>Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.</p>	<p>The lots are constrained by a reduced site area for the R2 Low Density zone, with both Lots also constrained by steep topography, and reduced widths and depths.</p> <p>There is no ability to provide additional setbacks and spatial separation without further areas of the indicative footprint of the proposed dwellings being further reduced. With respect to solar access, the location of buildings within the proposed lots may also have an impact on sunlight penetration to the neighbouring lots.</p> <p>However, as no concept design has been provided as part of the application full assessment of the individual dwellings against the built form controls, including solar access within WDCP 2011 cannot be undertaken.</p>	
Drainage	<p>Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.</p>	<p>Proposed Lot 1 and 2: Inter-allotment drainage (Lot 3) is supported by Councils Development Engineers including connections to cross through to an easement within Lot 2.</p>	Yes
Restrictions	<p>Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive</p>	<p>The creation of Lot 3 (Community Property) is proposed to accommodate inter-allotment drainage, from Lot 1 to Conover Street.</p>	Yes

	covenant or like instrument with the Council nominated as a party.		
Environmentally constrained land	<p>In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment.</p> <p>Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.</p>	<p>The subject site contains significant rock outcrop formations forming a distinctive natural feature in the topography of the property. The placement of a new dwelling house, particularly on Lot 2 will have a substantial impact on this distinctive feature of the property, including the significant rock outcrops throughout the site for the building works.</p> <p>The steep topography and rock outcrops form a distinguishing natural feature of the site. Due to the extensive works required for the future dwellings, such as site re-contouring and other engineering infrastructure, an adverse impact on the natural features of the site may occur.</p>	No
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	The application was referred to the NSW Rural Fire Service (RFS) for assessment. The NSW RFS raised no objections to approval, subject to their General Terms of Approval (GTA). The recommendations of the Bush Fire Report, along with the GTAs from the NSW RFS would ensure the appropriate risk from potential bushfire.	Yes

Merit consideration

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

- *To regulate the density of development.*

Comment:

The development will result in an additional dwelling in the local area which is not considered to unreasonably impact upon service infrastructure.

However, the provision of one additional dwelling as a result of the subdivision will result in a more visually and physically congested (and by implication, more dense) arrangement.

The non-compliance with the requirements of clause C1 Subdivision are directly influenced by the insufficient Lot sizes, with the future dwelling houses constrained by the limited size of the Lots, particularly as there is no ability to provide additional setbacks and spatial separation without further

areas of the indicative dwelling house footprints being reduced. Whilst the estimated building footprints are shown to be able to be located entirely within the required setback areas, the constrained Lot size do not demonstrated areas for access, decking, or outdoor recreational areas, which would significantly reduce the available landscape area.

The subdivision development would result in effective lot sizes of 438m² and 386.2m² respectively inconsistent with other subdivisions and does not provide a outcome that is compatible with the predominant subdivision character of the area.

The newly created lots are inconsistent with the pattern, size and configuration of existing lots in the locality, and are not in harmony with the established subdivision pattern consisting of predominately larger lot sizes with larger landscaped areas.

The inability to comply with the built form and clause C1 Subdivision controls under WDCP 2011 due to constrained Lot sizes and is considered an overdevelopment of the subject site. As a result, the site is not suitable to accommodate the proposed subdivision.

The development is considered to be inconsistent with this objective.

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

Comment:

The Lot sizes of the subdivision will impact the significant rock outcrops throughout the site due to the constrained area in which to build the future dwelling house, particularly for Lot 2. Therefore, it has not been demonstrated that the proposal is consistent with this objective, to ensure the development will not unreasonably impact on the natural landscape and topography.

The development is considered to be inconsistent with this objective.

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

Comment:

Each lot is required to provide adequate area for landscaping, future private open space, new drainage management, provision of services and new driveway access to comply with the Warringah DCP 2011. The estimated building footprints are shown to be able to be located entirely within the required setback areas. However, the Lots do not demonstrated areas for access, decking, or outdoor recreational areas, which would significantly reduce the available landscape area.

These proposed lot sizes are an overdevelopment and unsuitable for the site, particularly as the proposed dwellings on the site could be unable to comply with the built form controls under WDCP 2011 due to a constrained Lot size.

The development is considered to be inconsistent with this objective.

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

Comment:

The proposal has not demonstrated the ability to satisfy this requirement to based on proposed Lot sizes, topography of the Lots and the indicative footprint locations.

The development is considered to be inconsistent with this objective.

- *To maximise the use of existing infrastructure.*

Comment:

The proposal will require the construction of new driveways, stormwater detention basins and drainage connections. The subdivision is unlikely to create any adverse impact upon the existing infrastructure in and around the site.

The development is considered to be consistent with this objective.

- *To protect the amenity of adjoining properties.*

Comment:

The proposed density of the development will adversely affect the amenity of surrounding residential development by-way-of loss of environmental features and increased density of development on steeply sloping land. Insufficient information has been provided by the applicant demonstrate that the proposed development will protect adjoining properties from unreasonable amenity impacts of the development.

The development is considered to be inconsistent with this objective.

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

Comment:

The site is not subject to flooding. The proposed subdivision will provide an OSD basin and connection lines to better manage stormwater runoff from the site and reduce any nuisance runoff. Therefore risks to adjacent land from stormwater runoff will be minimised.

Whilst the site is mapped as bush fire prone land, submitted documentation, and General Terms of Approval from the NSW Rural Fire Service ensure the subdivision could conform to the specifications and requirements Planning for Bush Fire Protection.

The development is considered to be consistent with this objective.

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

C3 Parking Facilities

Description of non-compliance

The proposed Community Title subdivision requires a total of 5 car parking spaces (2 per dwelling house and 1 visitor) in accordance with Appendix 1 Part H of the WDCP 2011.

Part H, appendix 1 Car Parking Requirements states *"Community title subdivisions are to include provision for one visitor parking space per five dwellings or part thereof. These spaces are to be located within the neighbourhood property lot."*

The proposed subdivision has an insufficient provision of car parking and is deficient by one space. Whilst Lot 1 and Lot 2 can readily accommodate two cars each, there is no readily available solution to increase the quantum of car parking in Lot 3 the Community Property due to the width of Lot 3 being only 1.1m over steep topography.

Therefore, the proposal is deficient with the required car parking requirements for a Community Title subdivision and warrants a reason for refusal.

E6 Retaining unique environmental features

Merit consideration:

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

- *To conserve those parts of land which distinguish it from its surroundings*

Comment:

The subject site contains significant rock outcrop formations forming a distinctive natural feature in the topography of the property. The placement of a new dwelling house, particularly on Lot 2, will have a substantial impact on this distinctive feature of the property, including the significant rock outcrops throughout the site for the building works.

The steep topography and rock outcrops form a distinguishing natural feature of the site and due to the extensive works required for the future dwellings, such as site re-contouring and other engineering infrastructure, adverse impact on the natural features of the site may occur.

The subdivision will also require the construction of a drainage easement (Lot 3), that could impact the long term survival of rock outcrops that will be at risk of decline due to engineering works.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2021/1334 for the Subdivision of one lot into two lots (Community Title) on land at Lot 4 DP 30205,50 Condoover Street, NORTH 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 Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone R2 Low Density Residential of the Warringah Local Environmental Plan 2011.
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 C1 Subdivision of the Warringah 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 C3 Parking Facilities of the Warringah 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 E6 Retaining Unique Environmental Features of the Warringah Development Control Plan.

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

Signed



Catriona Shirley, Planner

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



Rodney Piggott, Manager Development Assessments