

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2102
Responsible Officer:	Nick England
Land to be developed (Address):	Lot 86 DP 11809, 8 Walsh Street NORTH NARRABEEN NSW 2101
Proposed Development:	Demolition works and subdivision of one (1) lot into two (2) lots
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Damian John Spinks Lisa Joanne Spinks
Applicant:	Damian John Spinks

Application Lodged:	25/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	05/06/2023 to 19/06/2023
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 9/20%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 0.00
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EXECUTIVE SUMMARY

This development application seeks consent for subdivision of one allotment (1,048m² in area) and the creation of two (2) allotments, Lot 1 (437.95m² in area) and Lot 2 (500m²) in area. The existing dwelling is proposed to be accommodated on Lot 1 and demolition of the existing garages/carport and swimming pool between the boundary of the proposed lots. Indicative building footprints for both allotments have provided.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposed allotments representing a variation to the minimum allotment size set within the LEP of 550m², with the variation on Lot 1 being up to 20% and a 9% variation is proposed on Lot 2.

Three (3) submissions were received during the notification periods. Concerns raised in the objections predominantly relate to: non-compliance with the minimum lot size; insufficient detail on any future development on the proposed lots; and potential amenity impacts on adjoining properties with regard to solar access and privacy.

Critical assessment issues on this application include:

- Minimum allotment size under Pittwater Local Environmental Plan 2014;
- The low-density character of the surrounding area; and
- Adequate information to demonstrate future development on the proposed undersized allotments and the application of the NSW Land and Environment Court Planning Principle for Subdivision "When a residential subdivision application should impose constraints on future development".

A written Clause 4.6 request for the non-compliance with the minimum lot size standard has been submitted by the applicant. Upon review of the documentation provided by the applicant in this regard, it is considered that it has not been established why it is unreasonable or unnecessary to comply with the development standard or that there are sufficient environmental planning grounds to support the request for the variation of the development standard.

This report concludes with a recommendation that the NBLPP refuse the development application.

PROPOSED DEVELOPMENT IN DETAIL

The application (as amended) consists of the subdivision of the existing allotment (1,048m² in area), and the demolition of associated structures (existing swimming pool, garages and carport) to create two (2) allotments of the following dimensions:

Lot 1: 437.95m² and access handle of 110.16m², with a combined area of 548.11m²
Lot 2: 500m².

Proposed Lot 1 is to retain the existing dwelling, with an estimated building area of 123m². Proposed Lot 2 provides a conceptual building area of 175m².

One (1) off-street car space is provided for each proposed allotment.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone R2 Low Density Residential
 Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
 Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation
 Pittwater Local Environmental Plan 2014 - 5.21 Flood planning
 Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
 Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
 Pittwater Local Environmental Plan 2014 - 7.10 Essential services
 Pittwater 21 Development Control Plan - A4.14 Warriewood Locality
 Pittwater 21 Development Control Plan - B2.2 Subdivision - Low Density Residential Areas
 Pittwater 21 Development Control Plan - C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities
 Pittwater 21 Development Control Plan - C4.7 Subdivision - Amenity and Design

SITE DESCRIPTION

Property Description:	Lot 86 DP 11809 , 8 Walsh Street NORTH NARRABEEN NSW 2101
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Walsh Street, Narrabeen.</p> <p>The site is generally regular in shape with a frontage of 15.24m along Walsh Street and a depth varying between 67.21 metres and 70.98 metres. The site has a surveyed area of 1,048m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single storey dwelling, swimming pool and outbuildings.</p> <p>The site is generally flat and located on in area identified as being prone to both low and medium flood risk.</p> <p>The site contains no significant vegetation or natural features.</p> <p>Adjoining and surrounding development is characterised by a range of dwelling types, including dwelling houses to the east, south and west. On the northern and north-western boundaries of the site a medium-density (seniors living) development comprising of eleven (11) townhouse style dwellings, two-storeys in height.</p>

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:

DA2022/0430: Development application for a "Construction of a dual occupancy (attached)" received by Council on 17 March 2022. The application was returned to the applicant on 22 March 2022, due to lack of information concerning: Quantity Surveyors Report / Cost Summary Report Form; Boundary Identification Survey; Statement of Environmental Effects; Arboricultural Impact Assessment Report; and Flood Risk Assessment Report.

History relevant to the subject application includes the following:

2 December 2022: Application received by Council.

7 December 2022: Upon review of the new application, additional information is requested from the applicant, in relation to: Boundary Identification Survey; and Preliminary Engineering Drawings.

23 January 2023: Applicant provides additional information as requested by Council.

25 January - 14 February 2023: Public notification of application. Three (3) submissions are received during the notification period.

9 May 2023: Correspondence forwarded to applicant informing of the outcome of the assessment, of which the application was not supported, for the following reasons: undersized allotments; insufficient written request to vary Council development standard; ambiguous information with respect to existing structures on the site; and insufficient building area provided to satisfy the future compliance with relevant development controls. The applicant was also advised to withdraw the application to the remaining outstanding issues.

26 May 2023: The applicant provides additional information, specifically: a revised subdivision plan outlining building areas and demolition of existing structures; and a revised written request to vary

Council development standards.

30 May - 19 June 2023: Amended application is re-notified. Number of unique submissions received is now at a total of four (4).

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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters could be addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 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 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to: minimum allotment size; written request to vary a development standard; insufficient building information; existing structures; and landscaped open space, in correspondence dated 9 May 2023. Additional information was provided on 26 May 2023.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter could be addressed via a condition of consent</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 requires the consent</p>

Section 4.15 Matters for Consideration	Comments
	<p>authority to consider insurance requirements under the Home Building Act 1989. This matter could be addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter could be addressed via a condition of consent.</p>
<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>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 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>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>Given the insufficient information provided with the application, it cannot be determined if the site is suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>This assessment has found the proposal to be contrary to the relevant standards and requirement(s) of the Pittwater Local Environmental Plan 2014 and the P21 Development Control Plan, specifically:</p> <ul style="list-style-type: none"> • Clause 4.1 Minimum subdivision lot size of PLEP 2014; • Part C4.2 Subdivision - Access Driveway and Off-Street Parking Facilities of P21 DCP; • Part C4.7 Subdivision - Amenity & Design <p>This 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.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 05/06/2023 to 19/06/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mr John Rodney Mackenzie	11 / 1468 - 1470 Pittwater Road NORTH NARRABEEN NSW 2101
Mrs Gillian Yates	10 / 1468 - 1470 Pittwater Road NORTH NARRABEEN NSW 2101
Ms Merrilyn Anne Delaney	42 Collins Street NORTH NARRABEEN NSW 2101
Mr Rod Mackenzie	Address Unknown

During the initial and re-notification periods, a total of three (3) submissions were received from adjoining properties.

The issues raised in the submissions have been summarised and are addressed below:

- **The proposed allotment sizes represent an unreasonable non-compliance with Council's development standards.**

Comment: The proposed non-compliance with the minimum allotment size is discussed in the section of the report pertaining to both Clause 4.1 Minimum subdivision lot size and Clause 4.6 Exceptions to development standards of PLEP 2014. In summary, the proposal and all the information provided with it, fails to prove that it is both unnecessary and unreasonable to achieve full compliance with this development standard. Therefore, this issue is considered valid and forms part of the reasons for the recommended refusal of the application.

- **No detail is provided on whether the existing structures on the land are to be demolished, in order to accommodate the proposed allotment boundaries.**

Comment: The applicant has provided additional information / conceptual plans to confirm that the proposed swimming pool (that currently straddles the proposed boundary between Lots 1 and 2) will be demolished.

- **Potential building footprints on the under-sized allotments should be reduced to correspond with the smaller than usual allotment sizes.**

Comment: Amended conceptual plans have been provided, which include the minimum building footprint specified under P21 DCP. However, this issue raises a valid concern on the principle that insufficient information has been provided on the future development of the allotments, in order to determine if they can be developed without having an adverse impact on adjoining properties.

- **Any future development on the proposed allotments will have an adverse effect on the privacy of adjoining dwellings at No.1468-1470 Pittwater Road.**

Comment: As stated previously, insufficient information has been provided on the future development of the allotments, in order if any adverse impact will occur on adjoining properties. Therefore, this issue is considered valid and forms part of the reasons for the recommended refusal of the application.

- **Council should not consider any variation to the minimum allotment size unless future / potential development plans are provided.**

Comment: For reasons already explained, this issue is considered valid and forms part of the recommended refusal of the application.

- **Insufficient detail has been provided to determine how the proposed subdivision can accommodate future development that has sufficient parking and does not cause adverse amenity impact in regard to solar access and privacy.**

Comment: This matter is discussed in greater detail in the section of the report pertinent to C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities of P21 DCP. In summary, insufficient information has been provided to determine if the potential future development of the site will provide sufficient off-street car parking. Therefore, this issue is considered valid and forms part of the reasons for the recommended refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><i>Not supported</i></p> <p>Landscape Referral have assessed the subdivision proposal against Pittwater DCP controls C4.7 Subdivision - Amenity and Design, and C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots.</p> <p>The proposed subdivision submits limited information for Landscape Referral to provide assessment of the landscape setting/outcome. The property does not contain any prescribed trees however the existing street tree is able to be retained, and as such C4.8 is satisfied.</p> <p>Without an indicative building envelope area, as required to be submitted with Subdivision applications, the capability to comply with C4.7 is unknown in terms of the provision of landscaping and/or recreation space for each proposed lot. Furthermore the capability to satisfy Pittwater DCP landscape controls C1.1 Landscaping and D11.10 Landscaped Area - General, with respect to the required 50% landscaped area for each proposed lot, is unknown.</p>
NECC (Development Engineering)	<p><i>Supported, subject to Conditions</i></p> <p>The proposed development involves the subdivision of one (1) lot in to two (2).</p> <p>The existing dwelling is proposed to remain on proposed Lot 1.</p> <p>Access to Lot 2 will be provided via a right of carriageway. The application does not propose construction or demolition works.</p>

Internal Referral Body	Comments	
	Submitted survey information indicates that proposed Lot 2 can drain to the street by gravity.	
NECC (Flooding)	<p>Supported, no Conditions required</p> <p>The development proposes to subdivide the existing lot to create two lots.</p> <p>There are no flood related objections. Future development can be built in accordance to Flood related DCP and LEP controls. The Flood Planning Level is 3.2m AHD and PMF level is 4.86m AHD.</p>	
NECC (Water Management)	<p>Supported, subject to Conditions</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WM Policy); and • Relevant LEP and DCP clauses <p>The proposal is a subdivision resulting in the creation of two (2) lots for which the total post development impervious area is unchanged. No stormwater plans have been provided and the existing impervious percentage impervious is not specified.</p> <p>Any future development of either lot must comply with the Northern Beaches Water Management for Development Policy.</p>	
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS	
	Discussion of reason for referral	
	<p>Supported, no Conditions required</p> <p>The proposal has been referred to Heritage as the subject site adjoins a heritage item</p> <p>Alma's Tree - 1468 Pittwater Road</p>	
	Details of heritage items affected	
	<p>Details of the item as contained within the Northern Beaches inventory is as follows:</p> <p><u>Statement of Significance</u></p> <p>The splendid Alma's Tree is a mature local landmark tree known to have been planted in the 1920s by local resident Alma Adams as a seedling from nearby trees cut down in 1950s. It has historical and aesthetic values at a local level associated with the settlement in rural Warringah during the 1920s.</p> <p><u>Physical Description</u></p> <p>This mature Moreton Bay fig tree is eighty years old</p>	
	Other relevant heritage listings	
	<table> <tr> <td>Sydney Regional</td><td>No</td></tr> </table>	Sydney Regional
Sydney Regional	No	

Internal Referral Body	Comments		
	Environmental Plan (Sydney Harbour Catchment) 2005		
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register		
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	<p>The proposal seeks consent for a two lot subdivision of the subject site. No building works are proposed. The heritage item is located to the north of the site, at the north east corner of 1468-1470 Pittwater Road. Given that the proposal involves no physical works, the proposal is considered to not impact upon the heritage item or its significance.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of PLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>		

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><i>Supported, no Conditions required</i></p> <p>The proposal was referred to Ausgrid who provided a response stating they had no objection to the the proposal.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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 (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 5.0 metres 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 5.0 metres of an overhead electricity power line.

Comment: The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	550m ²	Lot 1: 437.95m ² (excluding access handle of 110.16m ²)	20%	No
		Lot 2: 500m ²	9%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires development consent	Yes
4.1 Minimum subdivision lot size	No
4.6 Exceptions to development standards	No
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	N/A
7.2 Earthworks	N/A
7.10 Essential services	Yes

Detailed Assessment

Zone R2 Low Density Residential

A relevant objective of the R2 Low Density Residential zone to the proposed subdivision is:

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

The allotments in the proposed subdivision are undersized and the creation of such would prevent the provision of a low density residential environment, as the zone seeks to achieve.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Minimum Subdivision Lot Size
Requirement:	550m ²
Proposed:	Lot 1: 437.95m ² Lot 2: 500m ²
Percentage variation to requirement:	9 - 20%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

This assessment is based on the written reports, prepared by the Council Approval Group, dated 1 December 2022 and the addendum report provided on 24 May 2023.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.1 - Minimum subdivision lot size development standard is not expressly excluded from the operation of this clause.

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

(4) Development consent must not be granted for development that contravenes a development standard unless:
(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

The Applicant's written request has not demonstrated that the objectives of the development standard are achieved.

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

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

standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues the following points, as summarised and responded to below:

- The existing site is 1,048m² in area and surrounded by smaller allotments and is in effect, out of character with the surrounding area;
- Smaller allotments in the vicinity of the site range between 382 and 488m² in area, similar to the proposed allotments;
- The subject site adjoins medium density housing to the north and north-west;
- The proposed allotments can be developed in the future to be consistent with relevant controls of the Pittwater21 Development Control Plan; and
- The creation of the smaller allotment (Lot1) to retain the existing dwelling is a better use of resources than the alternatives to development, such as the creation of a dual occupancy development.

In response, these justifications are not supported, for the reasons discussed below:

- Retaining the existing allotment represents no adverse impact on the existing area, maintains the existing character, and is expressly consistent with the zone objectives to provide a "low-density" residential character. The concept of creating two undersized allotments just so they can be similar to other undersized allotments is contrary to the overall purpose of the minimum allotment size standard;
- An examination of the allotments in the area bounded by Pittwater Road, Walsh Street and Collins Street reveals that the majority of these allotments exceed 550m² in area. Further examination of Council's records demonstrates that those undersized allotments were created prior to the inception of the current development standard for allotment sizes (2014). It is therefore disingenuous to claim that the surrounding area is typified by allotments that are less than 550m² in area and that this standard has been effectively abandoned;
- The medium-density housing at 1468-1470 Pittwater Road was approved under the State planning legislation (Seniors housing) and is development to achieve state / regional objectives and not Council's local planning objectives. This land is therefore not relevant for the purposes of making comparisons on the relevance of the development standard;
- The applicant has not provided sufficient detail to prove that all the relevant controls of Pittwater21 DCP can be achieved in any future development on the proposed allotments; and
- Using a smaller allotment to retain the existing dwelling and in turn encourage no use of additional resources, cannot provide any certainty that this dwelling will remain on the site in perpetuity. Further, if the concern on the use of resources is relevant, then it would be more logical to not seek a subdivision of the land and instead retain it for the use of this existing dwelling and seek modest upgrades on this dwelling if needed.

Further, the written report/s provide commentary on the "Five Way" principles established by the NSW Land and Environment Court (the Court) in *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*), focusing on the "First Way" principle. However, the arguments put forward would appear to be more consistent with the "Third Way" of *Wehbe*, which states: the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

By way of example, on Page 14, the written report asserts that the proposed lots will achieve, and has been designed and demonstrated, to satisfy other development controls in regard to: building height; site coverage; landscaping; setbacks; provision of services; parking; access; private open space; and deep soil zones. It also further asserted on Page 15 that "strict compliance with the standard would not allow this suitable development and preclude a positive residential outcome for the site and area".

However, the application proposes no physical works, only subdivision, hence there is no way to confirm that these matters have been adequately satisfied and in turn, conclusively proven that compliance with the standard is either unnecessary and / or unreasonable.

In the matter of *Parrott v Kiama Council* [2004] NSWLEC 77, the Court held that a subdivision application should provide constraints on future buildings when the proposed allotments are smaller than usual. Or, specifically, provide detailed designs that demonstrate that the constraints of the proposed allotments can be met through specialised designs. Therefore, as the allotments proposed

are undersized and submissions have been received from adjoining properties, it is necessary that the proposal be supported by full details of any future development on the site. The assertions made in the written report therefore are not supported by sufficient detail.

As a result, the written reports have not provided sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b), on two grounds. Firstly, the reasons to justify the variation are not presented in a cogent manner that is persuasive to the degree that a variation could be seriously considered. And secondly, there is not sufficient supporting information to verify the reasons put forward in the written request.

Further, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the proposal will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act. It is held that given the absence of sufficient environmental planning grounds, that it is both reasonable and necessary that the proposal comply with the development standard.

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the PLEP 2014 are:

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

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

Comment: As stated previously, an investigation has been undertaken of the lot sizes in the immediate area, specifically the area bounded by Pittwater Road, Walsh Street and Collins Street. This has proven that the majority of allotment sizes in this area are consistent with the minimum 550m² lot size. Hence, any proposal to create allotments that are smaller than the minimum size are likely to have an adverse impact on the surrounding residential character and in turn are not consistent with this objective.

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

Comment: As stated previously, the application has not provided sufficient information that the future allotments can be developed in accordance with the relevant standards and controls. It

must be noted that the land is subject to hazards, specifically being a both a Low and Medium risk flood category land under P21 DCP. This may have some impact on the location and height of potential buildings and it has not been demonstrated that undersized allotments can adequately respond to this hazard. Hence, the application does not satisfy this objective.

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

Comment: As stated previously, the application has not provided sufficient information that the future allotments can be developed in accordance with the relevant standards and controls. Hence, the application does not satisfy this objective.

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

Comment: The application is not likely to compromise this objective.

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

Comment: The application is not likely to compromise this objective.

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

Comment: Not relevant to the application, as the land is not located in a rural zone.

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

Comment: The application has not provided sufficient information that the future allotments can be developed in accordance with the relevant standards and controls. Hence, the application does not satisfy this objective.

Zone objectives

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

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

Comment: Central to the preservation of a "low density" residential character is to ensure that any proposed allotments are consistent with the minimum allotment size. The proposed allotments represent up to a 20% non-compliance with the standard and the applicant has not proven that these undersized allotments can be developed in a way that both minimises its impact on adjoining properties and responds to the existing hazards on the land. Therefore, the application does not comply with this objective.

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

Comment: This objective is not relevant to the proposed development.

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

surrounding land uses.

Comment: This objective is not relevant to the proposed development.

Conclusion:

For the reasons detailed above, the proposal is inconsistent with the primary objective of the R2 Low Density Residential zone, which is to maintain an enhance a low-density residential environment..

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Minimum Subdivision Lot Size Development Standard can not be assumed.

5.10 Heritage conservation

The subject site adjoins a heritage item, being "Alma's Tree" at 1468 Pittwater Road. The application was referred to Council's Heritage Advisor who responded with no objection to the proposed subdivision.

5.21 Flood planning

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

Comment: The application was referred to Council's Floodplain Management team, who advised that they had no objection to the proposed subdivision.

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe*

evacuation of people in the event of a flood,

(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.

Comment: As stated above, Council's Floodplain Management team has no objection to the proposed subdivision.

7.1 Acid sulfate soils

Clause 7.1 - '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 3, as indicated on Council's Acid Sulfate Soils Planning Map.

Normally, any works at depths beyond 1.0m below the natural ground surface and/or works by which the watertable is likely to be lowered more than 1.0 metre below the natural ground surface within a Class 3 acid sulfate soil area are required to be assessed to determine if any impact will occur. However, as no physical works are proposed as part of the proposed subdivision, then no such investigations are required as part of this application.

7.2 Earthworks

No earthworks are proposed, therefore this clause is not applicable to the proposed development.

7.10 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

(a) the supply of water,

(b) the supply of electricity,

(c) the disposal and management of sewage,

(d) stormwater drainage or on-site conservation,

(e) suitable vehicular access.

Comment:

The site is adequately serviced by utilities and these utilities could be extended through to each allotment.

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.14 Warriewood Locality	No	No
B1.2 Heritage Conservation - Development in the vicinity of	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
heritage items, heritage conservation areas, archaeological sites or potential archaeological sites		
B2.2 Subdivision - Low Density Residential Areas	No	No
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
C4.1 Subdivision - Protection from Hazards	Yes	Yes
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities	No	No
C4.3 Subdivision - Transport and Traffic Management	Yes	Yes
C4.4 Subdivision - Public Roads, Footpath and Streetscape	Yes	Yes
C4.5 Subdivision - Utility Services	Yes	Yes
C4.6 Service and delivery vehicle access in subdivisions	Yes	Yes
C4.7 Subdivision - Amenity and Design	No	No

Detailed Assessment

A4.14 Warriewood Locality

Desired Future Character (DFC)

Relevant to the proposal is the aspect of the DFC which states that: *"Existing residential areas will remain primarily low-density with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape"*.

The proposed non-compliance with the minimum subdivision allotment size will be inconsistent with the requirement of the DFC that seeks to retain the subject area as "low-density". Creating allotment sizes under the minimum required area represent an unacceptable diminution of the aims of the DFC. Further, the applicants failure to provide specific detail on how these undersized allotments can be developed provide no assurance to Council that objectives of the DFC can met by the proposed development.

B2.2 Subdivision - Low Density Residential Areas

Part B2.2 requires that a minimum area for building of 175m² be provided for each proposed allotment.

The amended plans in relation to Proposed Lot 1 (which is to be subject to the existing dwelling house) does not specify a minimum building area. The existing dwelling footprint is estimated at 123m², short of the minimum required area.

Therefore, insufficient information has been provided to determine if the proposed subdivision can meet the requirements of P21 DCP.

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

Insufficient information has been provided to demonstrate that the future development on the allotment will comply with the minimum requirements for off-street car parking.

The conceptual building layouts provided illustrate one (1) car space for each allotment.

P21 DCP requires that 1 space be provided for 1 bedroom dwellings, however dwellings with two (2) or more bedrooms must provide 2 car spaces.

The existing dwelling on Proposed Lot 1 is likely to have more than 1 bedroom and no detail is provided on Proposed Lot 2 to demonstrate how many bedrooms will be in future development on the site.

Hence, there is insufficient information to determine if this control of Council can be met.

C4.7 Subdivision - Amenity and Design

The controls of Part C4.7 state in part:

Subdivision should be designed to ensure that . . . b) the impact on the environment of the completed development (including buildings to be constructed on the proposed lots) has an acceptable impact on the environment.

The proposed allotments are undersized, hence in the initial assessment of the proposal it was determined that full detail of the future development on the proposed would be needed. This is consistent with the NSW Land & Environment Court Planning Principle "Subdivision - When a residential subdivision application should impose constraints on future development", which emphasises the importance of providing full development detail when considering the creation of under-sized allotments.

However, the applicant has failed to provide the necessary information to determine whether the proposed subdivision will have an adverse impact on the surrounding environment. Therefore, the application is not consistent with Part C4.7.

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 2022

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 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.1 Minimum Subdivision Lot Size has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

PLANNING CONCLUSION

This proposal, for subdivision of the existing land into two (2) allotments, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the extent of the proposed variation with the minimum lot size development standard under PLEP 2014.

The critical assessment issues in the application centre on the:

- Significant variations of the proposal with the minimum allotment size;
- Preserving the low-density character of the surrounding area; and
- The inadequate information provided by the applicant to justify the proposal.

The issues raised in the objections received during the public notification periods are considered valid

under the circumstances.

It is therefore recommended that the application be refused, based on the following reasons summarised below:

- The insufficient size of both the proposed allotments to meet the objectives of Council's development standards;
- Inadequate demonstration that the future allotments can be developed in accordance with the relevant standard and controls; and
- There being no sufficient environmental planning grounds to support the proposed variation with the development standard.

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 DA2022/2102 for the Demolition works and subdivision of one (1) lot into two (2) lots on land at Lot 86 DP 11809,8 Walsh Street, NORTH NARRABEEN, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.

2. **Objectives of R2 Zone**

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with both the aims of the Pittwater Local Environmental Plan 2014 and the objectives of the R2 Low Density Residential zone of the Pittwater Local Environmental Plan 2014.

Particulars:

The allotments in the proposed subdivision are undersized and the creation of such would be contrary to the desired future character of the Warriewood locality and the objectives of the R2 zone in which the land is located, which is the provision of a low density residential environment.

3. **Written Request to Vary Minimum Subdivision Lot Size**

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 both Clause 4.1 Minimum subdivision lot size and Clause 4.6 Exceptions to development standards of the Pittwater Local Environmental Plan 2014.

Particulars:

The development proposes undersized allotments of 438m² and 500m², which represent significant variation of 9 and 20%, respectively. The written request provided fails to provide compelling reasons that justify the variation to the development standard and to convince Council, as the consent authority, that it is unnecessary and unreasonable to expect full compliance with the minimum allotment size development standard.

4. **Desired Future Character**

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 A4.14 Warriewood Locality (Desired Future Character) of the Pittwater 21 Development Control Plan.

Particulars:

The undersized allotments will not satisfy the requirements of the Desired Future Character for Warriewood, which seek to retain the existing "low-intensity" character of the area. Further, the applicant has failed to provide any specific details of future development on these under-sized allotments, to demonstrate how the proposed allotments will achieve the low-intensity character of the area.

5. **Minimum Building Area**

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B2.2 Subdivision - Low Density Residential Areas of the Pittwater 21 Development Control Plan.

Particulars:

An inadequate minimum building area is provided on Proposed Lot 1. The application has therefore failed to provide sufficient information that future development can be accommodated on the proposed allotments, consistent with the NSW Land and Environment Court Planning Principle "Subdivision - When a residential subdivision application should impose constraints on future development" [*Parrott v Kiama Council* [2004] NSWLEC 77]

6. Off-Street Parking Facilities

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities of the Pittwater 21 Development Control Plan.

Particulars:

There is insufficient information provided to determine if future development on the site can provide adequate off-street car parking and not have adverse impact on the surrounding local road network.

7. Amenity and Design

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4.7 Subdivision - Amenity and Design of the Pittwater 21 Development Control Plan.

Particulars:

Insufficient information has been provided to determine if the under-sized allotments proposed will not have an adverse impact on the amenity of the surrounding area.