



## Pre-lodgement Meeting Notes

<b>Application No:</b>	PLM2021/0008
<b>Meeting Date:</b>	2 February 2021
<b>Property Address:</b>	50 Condoover Street, North Balgowlah
<b>Proposal:</b>	Subdivision of one lot into two
<b>Attendees for Council:</b>	<ul style="list-style-type: none"><li>• Steven Findlay – Manager, Development Assessment</li><li>• Tony Collier – Principal Planner</li></ul>
	Additional comments provided by:
	<ul style="list-style-type: none"><li>• Mitchell Flynn - Landscape Assessment &amp; Design Officer</li></ul>

### General Comments/Limitations of these Notes

These notes have been prepared by Council's Development Advisory Services Team on the basis of information provided by the applicant and a consultation meeting with Council staff. Council provides this service for guidance purposes only.

These notes are an account of the advice on the specific issues nominated by the Applicant and the discussions and conclusions reached at the meeting.

These notes are not a complete set of planning and related comments for the proposed development. Matters discussed and comments offered by Council will in no way fetter Council's discretion as the Consent Authority.

A determination can only be made following the lodgement and full assessment of the application.

In addition to the comments made within these Notes, it is a requirement of the applicant to address the relevant areas of legislation, including (but not limited to) any State Environmental Planning Policy (SEPP) and any applicable sections of the Warringah Local Environmental Plan 2011 and Warringah Development Control Plan 2011, within the supporting documentation including a Statement of Environmental Effects, Modification Report or Review of Determination Report.

You are advised to carefully review these notes and if specific concern have been raised or non-compliances that cannot be supported, you are strongly advised to review your proposal and consider amendments to the design of your development prior to the lodgement of any development application.



## SPECIFIC ISSUES RAISED BY APPLICANT FOR DISCUSSION

Response to Matters Raised by the Applicant
<p><b>Lot Subdivision</b></p> <p>See notes under Warringah Local Environmental Plan 2011 under Clause '4.1 Minimum subdivision lot size'.</p> <p><b>Existing Trees</b></p> <p>See notes under Specialist Advice under Landscape under 'E1 Preservation of Trees or Bushland Vegetation'.</p> <p><b>Demolition of House</b></p> <p>See notes under Warringah Development Control Plan 2011 under Clause 'C8 Demolition and Construction'.</p>

## WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011 (WLEP 2011)

WLEP 2011 can be viewed at <https://www.legislation.nsw.gov.au/view/html/inforce/current/epi-2011-0649>

Part 2 - Zoning and Permissibility	
<b>Definition of proposed development:</b> (ref. WLEP 2011 Dictionary)	<ul style="list-style-type: none"> <li>• Subdivision</li> <li>• Dwelling house</li> </ul>
<b>Zone:</b>	R2 Low Density Residential
<b>Permitted with Consent or Prohibited:</b>	Permitted with Consent

Part 4 - Principal Development Standards			
Standard	Permitted	Proposed	Comment
<b>4.1 Minimum subdivision lot size</b>	600m <sup>2</sup> per dwelling	<p><u>Lot A</u> 438.8m<sup>2</sup> (variation of 26.9%)</p> <p><u>Lot B</u> 410.5m<sup>2</sup> (variation of 31.6%)</p>	<p><b>Does not comply.</b></p> <p>See note below and comments under Clause 4.6 below.</p>
<b>4.3 Height of buildings</b>	8.5m	Unable to determine.	Dwelling proposed on Lots A & B are to comply with the maximum height of buildings.



**Note:** The proposed subdivision lot sizes for Lot A and Lot B are significantly less than the permitted minimum of 600m<sup>2</sup> per lot. The variation for Lot A is 26.9% and Lot B is 32.6% which contravenes the numerical standard by greater than 10%, which will require automatic referral of a Development Application to the Northern Beaches Local Planning Panel for consideration and determination.

#### **Clause 4.6 - Exceptions to Development Standards**

Clause 4.6 enables the applicant to request a variation to the applicable Development Standards listed under Part 4 of the LEP pursuant to the objectives of the relevant Standard and zone and in accordance with the principles established by the NSW Land and Environment Court.

A request to vary a development Standard is not a guarantee that the variation would be supported as this needs to be considered by Council in terms of context, impact and public interest and whether the request demonstrates sufficient environmental planning grounds for the variation.

**Note:** The argument presented in the documentation accompanying the pre-lodgement application is not considered to be sufficient in justifying the significant non-compliance to the lot size as the lots used in the discussion 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.

Furthermore, the argument focuses on the number of lots with lot sizes of between 401m<sup>2</sup> & 500m<sup>2</sup> (i.e. 250) but neglects to acknowledge the greater proportion of lots which have greater areas of between 501m<sup>2</sup> & 600m<sup>2</sup> and between 601m<sup>2</sup> & 700m<sup>2</sup> (323 and 265 respectively).

#### **WARRINGAH DEVELOPMENT CONTROL PLAN 2011 (WDCP 2011)**

WDCP 2011 can be viewed at

<https://eservices.northernbeaches.nsw.gov.au/ePlanning/live/pages/plan/book.aspx?exhibit=DCP>

The following notes the identified non-compliant areas of the proposal only.

<b>Part B – Built Form Controls</b>		
<b>Control</b>	<b>Permitted</b>	<b>Proposed</b>
<b>B1 Wall Height</b>	7.2m	To be satisfactorily addressed in the Development Application
<b>B3 Side Boundary Envelope</b>	4m x 45°	To be satisfactorily addressed in the Development Application
<b>B5 Side Boundary Setbacks</b>	0.9m	To be satisfactorily addressed in the Development Application
<b>B7 Front Boundary Setbacks</b>	6.5m	To be satisfactorily addressed in the Development Application



Part B – Built Form Controls		
<b>B9 Rear Boundary Setbacks</b>	6.0m	To be satisfactorily addressed in the Development Application
<p>As discussed at the meeting, given the significant non-compliance to the permitted lot size, any development Application for the subdivision of the property will be required to be accompanied by detailed designs of dwellings for each new lot.</p> <p>In this manner, the Development Application is to be for the subdivision of one lot into two lots and the construction of two new dwelling houses (combined). This has been a consistently applied requirement for subdivisions involving significant variations to lot sizes and where the lot(s) are highly constrained. See the LEC Planning Principle (Parrot v Kiama) for background and basis for our reasoning for this requirement.</p> <p>Notwithstanding, the designs of each dwelling is to comply with the requirements of the above Clauses.</p>		
Part C – Siting Factors		
<b>C1 Subdivision</b>	<ul style="list-style-type: none"> <li>• Minimum width: 13m</li> <li>• Minimum depth: 27m; and</li> <li>• Minimum building area: 150m<sup>2</sup></li> <li>• Driveway gradient not exceeding 1:4, allowing for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.</li> <li>• Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system.</li> </ul>	<p><b>Width</b></p> <ul style="list-style-type: none"> <li>• Lot A: 13.6m</li> <li>• Lot B: <b>8.4m</b></li> </ul> <p><b>Depth</b></p> <ul style="list-style-type: none"> <li>• Lot A: <b>21m</b> to 27m</li> <li>• Lot B: <b>26m</b> to 33.6m</li> </ul> <p><b>Building Area</b></p> <ul style="list-style-type: none"> <li>• Lot A: 149.8m<sup>2</sup></li> <li>• Lot B: 152m<sup>2</sup></li> </ul> <p><b>Driveway Gradient</b></p> <ul style="list-style-type: none"> <li>• Lot A: Not provided</li> <li>• Lot B: Not provided</li> </ul> <p><b>Drainage</b></p> <ul style="list-style-type: none"> <li>• Lot A: Not provided</li> <li>• Lot B: Not provided</li> </ul>
<p><b>Note:</b> The above lists only the key requirements of Clause C1. Full requirements are to be examined and addressed prior to submitting a Development Application.</p> <p>Concern is raised regarding the narrow width of Lot B which is 4.6m (35.3%) less than required. Furthermore, although minor, the development also exhibits deficiencies in the lot depths.</p> <p>These non-compliances, together with the significant non-compliances to the proposed lot sizes raises the question as to overdevelopment and the suitability of the site, particularly if the proposed dwellings on the site are unable to comply with the built form controls under Clauses B1, B3, B5, B7, B9 and D1.</p>		
<p><b>C7 Excavation and Landfill</b></p> <p>Concern was raised at the meeting with respect to the level of excavation proposed (as illustrated in the Section on the plan 'Subdivision Section LD-SK-02).</p> <p>Given the significant rock outcrops throughout the site and the requirement of Clause E6 'Retaining Unique Environmental features', excavation of the site is not supported. The design of any dwellings on the proposed lots is to incorporate the retention of rock outcrops by siting the dwelling on piers.</p>		



Part B – Built Form Controls		
Part D - Design		
<b>D1 Landscaped Open Space and Bushland Setting</b>	40% of the site area: <ul style="list-style-type: none"> <li>Lot A: 175.5m<sup>2</sup></li> <li>Lot B: 164.2m<sup>2</sup></li> </ul>	To be satisfactorily addressed in the Development Application
<p>As discussed at the meeting, given the significant non-compliance to the permitted lot size, any Development Application for the subdivision of the property will be required to be accompanied by detailed designs of dwellings for each new lot. In this manner, the development Application is to be for the subdivision of one lot into two lots and the construction of two new dwelling houses. Notwithstanding, the designs of each dwelling is to comply with the requirements of the Clause D1.</p>		

Specialist Advice
<p><b>Landscape</b></p> <p>The Statement of Environmental Effects (SEE) shall include commentary of relevant landscape clauses of the WDCP 2011, and in this instance the following:</p> <ul style="list-style-type: none"> <li>D1 Landscaped Open Space and Bushland Settings</li> <li>E1 Preservation of Trees or Bushland Vegetation</li> <li>E6 Retaining unique environmental features</li> </ul> <p><u>D1 Landscaped Open Space and Bushland Settings</u></p> <p>A <b>Landscape Plan</b> is required to demonstrate that the proposed development satisfies the DCP clause, including:</p> <ul style="list-style-type: none"> <li>conserve and enhance indigenous vegetation, topographical features and habitat for wildlife</li> <li>establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building</li> <li>provide privacy between buildings and/or provide privacy to private open spaces</li> </ul> <p>Any on slab planter or roof gardens shall comply with the following soil depth guidelines:</p> <ol style="list-style-type: none"> <li>300mm for lawn and groundcovers</li> <li>600mm for shrubs and accents</li> <li>1m for small trees</li> </ol> <p>Design certification will be required at Construction certificate stage by a qualified Structural Engineer, that the planters / roof garden are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).</p> <p><u>E1 Preservation of Trees or Bushland Vegetation</u></p> <p>The SEE shall include discussion on the trees and vegetation within the site and within adjoining properties. Should all trees and vegetation be 5 metres or less in height (i.e. Exempt Species), no Arboricultural Impact Assessment is required, and this is to be reported in the SEE.</p>



### Specialist Advice

For prescribed (protected) trees under the DCP, (i.e. 5 metres and over), excluding Exempt Species, an **Arboricultural Impact Assessment** is required to provide clarification on which trees are to be retained, including tree protection measures, and which trees are to be removed.

The Arboricultural Impact Assessment report shall indicate the impact of development upon the existing trees within the site, and for any existing tree on adjoining properties located 5 metres from the site (building and associated excavation or fill zones).

The report shall be prepared by a qualified Arborist AQF Level 5 and shall cover assessment of excavation and construction impacts upon the SRZ and TPZ, tree protection requirements, and recommendations. Recommendations shall include the setback distance from each tree where no construction impact is to occur to ensure the long term retention of the tree.

Any development impact shall be outside of the structural root zone, and impact to the tree protection zone, for trees retained, shall be limited to satisfy AS4970-2009.

Existing trees and vegetation within adjoining property and within the road verge is not permitted to be impacted upon. Council does not support the removal of street trees unless the street tree is proven to present an arboricultural risk.

No impact to existing trees and vegetation within adjoining properties is acceptable, regardless of species type.

As a general principle, the site planning layout shall be determined following arboricultural investigations and recommendations. Any proposal to remove existing trees of moderate to high retention value will not be supported by Council if an alternative design arrangement is available, as assessed by Council.

#### E6 Retaining unique environmental features

Existing rock outcrops within the site should be incorporated into the site planning and design layout, and shall be documented in all plans.

### Relevant Council Policies

You are advised of the following (but not limited to all) Council's policies available at Council's website:

- Stormwater drainage for low level properties PDS-POL 135
- Vehicle access to all roadside development: LAP-PL 315
- Community Participation Plan

### Documentation to accompany the Development Application

- Lodge Application via NSW Planning Portal
- Statement of Environmental Effects (including Subdivision Character Analysis and a Clause 4.6 Variation Request - as an attachment)
- Scaled and dimensioned plans of dwellings on Lots A and B:
  - Site Plan
  - Floor Plans
  - Elevations
  - Sections



#### **Documentation to accompany the Development Application**

- Landscape Plan
- Subdivision Plan
- Certified Shadow Diagrams (depicting shadows cast at 9am, Noon and 3pm on 21 June).
- Cost of works estimate/ Quote
- Survey Plan (Boundary Identification Survey)
- Site Analysis Plan
- Demolition Plan
- Excavation and fill Plan
- Waste Management Plan (Construction & Demolition)
- Driveway Design Plan
- Erosion and Sediment Control Plan / Soil and Water Management Plan
- Stormwater Management Plan / Stormwater Plans and On-site Stormwater Detention (OSD) Checklist
- Landscape Plan
- Arboricultural Impact Assessment
- Geotechnical Report

*Please refer to Development Application Lodgement Requirements for further detail.*

#### **Concluding Comments**

These notes are in response to a pre-lodgement meeting held on 2 February 2021 to discuss subdivision of one lot into two at 50 Condoval Street, North Balgowlah. The notes reference the plans prepared by McGregor Coxall.

Concern is raised regarding the significant non-compliance to the requirements of Clause 4.1 – Minimum Subdivision Lot Size under the Warringah Local Environmental Plan 2011 and the potential non-compliances that the establishing of dwellings on the site would achieve.

As discussed at the meeting, given the significant non-compliance to the permitted lot size, any Development Application for the subdivision of the property will be required to be accompanied by detailed designs of dwellings for each new lot.

In this manner, a Development Application is to be for the subdivision of one lot into two lots and the construction of two new dwelling houses.

Notwithstanding, based on the advice at the meeting and confirmed in these Notes, the proposal cannot be supported and you are advised not to submit a Development Application for the subdivision of the property.

#### **Question on these Notes?**

Should you have any questions or wish to seek clarification of any matters raised in these Notes, please contact the member of the Development Advisory Services Team at Council referred to on the front page of these Notes.