

DEVELOPMENT APPLICATION ASSESSMENT REPORT

| | |
|----------------------------|-------------|
| Application Number: | DA2021/1464 |
|----------------------------|-------------|

| | |
|---|--|
| Responsible Officer: | Anne-Marie Young |
| Land to be developed (Address): | Lot 1 DP 1220196, 4 - 10 Inman Road CROMER NSW 2099 |
| Proposed Development: | Subdivision of existing land into three (3) allotments |
| Zoning: | Warringah LEP2011 - Land zoned IN1 General Industrial |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Land and Environment Court Action: | No |
| Owner: | Perpetual Corporate Trust Ltd |
| Applicant: | EG Funds Management Pty Ltd |

| | |
|----------------------------------|--------------------------|
| Application Lodged: | 24/08/2021 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Industrial |
| Notified: | 02/09/2021 to 16/09/2021 |
| Advertised: | Not Advertised |
| Submissions Received: | 1 |
| Clause 4.6 Variation: | Nil |
| Recommendation: | Approval |

| | |
|---------------------------------|---------|
| Estimated Cost of Works: | \$ 0.00 |
|---------------------------------|---------|

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks development consent for a subdivision from 1 into 3 lots as follows:

- **Lot One (1) (Stage 1)** allotment with an area of 36,527m² (approved DA2019/1346 for commercial). Lot 1 comprises the land associated with the approved warehouse/ industrial use on along South Creek Road pursuant to DA2019/1346.
- **Lot 2 (2) (Stage 2)** allotment with an area of 32,728m² (future DA). Lot 2 has a 120-metre frontage to South Creek Road and a 205-metre frontage to Campbell Avenue, and
- **Lot (3) (Stage 3)** allotment with an area of 5,420m² (future DA). Lot 3 has a 70-metre frontage to Inman Road and a 73-metre frontage to Orlando Road.

The application is supported with a Traffic Report which identifies the following existing and approved vehicular access locations for lot 1 and indicative locations for lots 2 and 3.

- **Lot 1** - has driveways proposed along South Creek Road, including at the eastern end of the lot boundary.
- **Lot 2** - has vehicular access to South Creek Road and it has been suggested that the future access will driveway be located at the existing Gate 4 driveway. There is also an opportunity for future access to Lot 2 to be also provided via an upgraded vehicular crossover on Campbell Avenue, if required.

Additional information, including a letter prepared by Travers Bushfire and Ecology was submitted by the Applicant on the 10 November 2021 that confirms that the proposal is only for a paper subdivision and a follow-on from the previous approval of DA2019/1346 for major alterations and additions to the existing buildings on the site. The additional information confirms that no physical work is being proposed as part of this application, no built form or infrastructure constructed or clearing of vegetation. Any future proposal will be subject to assessment at the time development consent is sought.

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 Development Control Plan - C1 Subdivision
Warringah Development Control Plan - C3 Parking Facilities

SITE DESCRIPTION

| | |
|-----------------------------------|--|
| Property Description: | Lot 1 DP 1220196 , 4 - 10 Inman Road CROMER NSW 2099 |
| Detailed Site Description: | The site is legally described as Lot 1 within DP 1220196 and is known as No.4-10 Inman Road (also being known as 100 South Creek Road), Cromer. The subject site is more commonly referred to as the former Roche Products Australia premises. It has four (4) street frontages, being |

South Creek Road to the south, Inman Road to the west, Campbell Avenue to the east and Orlando Road to the north. The north-western corner of the site is bound by Orlando Road, which connects to Parkes Road. The site also has frontage to Campbell Avenue. The remainder of the subject site shares a common boundary with existing residential dwellings and a childcare centre to the north.

The site is zoned IN1 General Industrial under the Warringah Local Environmental Plan 2011 (WLEP2011) and includes mostly office buildings and large warehouse/manufacturing buildings. The site has been significantly developed and includes a variety of buildings and structures, ranging in age from the 1920's through to 2005.

The site contains three (3) heritage items, being the central industrial "Roche" building, the weatherboard cottage located in the south-eastern corner of the site and a stand of trees adjacent to Campbell Avenue. These items will remain unaffected by the current proposal. There is also known to be some Aboriginal cultural relics within or near the north-western corner of the site.

Vehicle access to the site is available off both South Creek Road and Inman Road.

Map:



SITE HISTORY

On 9 September 2019, a pre-lodgement meeting was held to discuss a proposed redevelopment of the site for the construction of an industrial development, landscaping and car parking.

On 27 November 2019, DA2019/1346 was approved for demolition works and alterations and additions to an existing industrial facility, including a new warehouse, self-storage, office premises and an ancillary café.

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 industrial purposes for an extended period of time and is declared as significantly contaminated. The application was referred to the EPA who requested that they be notified should any contamination be identified during the re-development of the site. Although the application is solely for subdivision and no physical work is proposed a condition has been included in the recommendation to alter the owner or future owners of their responsibility under the Contaminated Lands Management Act 1997. |
| 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)(iiia) – Provisions of any planning agreement | None applicable. |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. No physical work is being proposed therefore these conditions are not required.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested to address biodiversity issues and drainage issues.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent</p> |

| Section 4.15 Matters for Consideration' | Comments |
|--|---|
| | <p>authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This clause is not relevant to this application.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p> |
| Section 4.15 (1) (b) – the 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 suitable for the proposed development. |
| 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 | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 02/09/2021 to 16/09/2021 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 Mark Alexander Uhlemann | 49 Campbell Avenue CROMER NSW 2099 |

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

- **Traffic and Road safety**

The matters raised within the submissions are addressed as follows:

- The indicated vehicular access of Lot 2 would be a significant change to the adjoining residential area with concerns about increased traffic and road safety. Furthermore, I would like to give to consideration that the access to Campbell Ave with one lane in each direction and heavily used curbside parking on both sides at the entrance of the street is effectively reducing this to a narrow 1 lane, with a playground right across. The to be expected increased traffic of potentially heavy vehicles can significantly impact the safety of the user's of the playground, being the kids of the area. Instead of increasing the traffic and deteriorating the quality of living in this area, I consider this space to offer significant opportunity to create a modern and family friendly area in the Northern Beaches community.

Comment:

The subject application is for the paper sub-division only and a detailed assessment of the provision for safe vehicular access to all lots will be reviewed when DA's for the respective lots are submitted to Council. Any future DA will be notified to neighbouring properties and issues relating to traffic and road safety will be considered under these applications.

In regards to the assessment of the current subdivision and the specific issues raised in the submission, Council's Transport Officer notes that Lot 2 has a side frontage to Campbell Avenue north of South Creek Road. This section of Campbell Avenue is residential on its eastern side and has a kerb to kerb width of approximately 7.0m, with parking currently permitted on both sides of the road and it is considered unsuitable for access by heavy vehicles. If access is proposed off this part of Campbell Avenue, it should only be for light vehicles (eg to a staff parking area). A condition has been included in the recommendation to this affect.

REFERRALS

| Internal Referral Body | Comments |
|---|------------------|
| Environmental Health (Contaminated Lands) | SUPPORTED |

| Internal Referral Body | Comments |
|----------------------------------|---|
| | <p><i>General Comments</i></p> <p>This proposal is for a subdivision only and does not propose any physical works. Environmental Health requested comments from the Environment Protection Authority (EPA) as this site has been declared as significantly contaminated. The NSW EPA provided an assessment response to the proposed subdivision dated 28 September 2021. They have advised a number of considerations which Health will include as supported conditions.</p> <p><i>Recommendation</i></p> <p>Supported</p> |
| Landscape Officer | <p>SUPPORTED</p> <p>The application seeks consent for subdivision of land into three lots. No physical works are indicated to be undertaken on the site.</p> <p>Councils Landscape Referral section has considered the application against the Warringah Local Environmental Plan, and the following Warringah DCP 2011 controls:</p> <ul style="list-style-type: none"> • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation <p>As noted above, no physical works are proposed under this application. No objections are raised with regard to landscape issues. It is noted that sites of Aboriginal significance have been recorded on and adjacent to the site. Referral to the AHO for comment is recommended.</p> |
| NECC (Bushland and Biodiversity) | <p>SUPPORTED</p> <p><u>Final Referral 03 dated 05.01.2021</u></p> <p>The applicant has advised that development application DA2021/1464 does not propose the clearing of any native vegetation or development which would require the clearing of native vegetation. Based on the information provided by the applicant, Council has concluded that the proposed subdivision and the purposes for which the land is to be subdivided does not require the clearing of native vegetation, and accordingly, clearing of native vegetation under Clause 7.1(3) of the BC Regulation does not need to be assessed for the purposes of determining the development application.</p> <p>Therefore in this instance, the clearing of native vegetation for the purposes of the subsequent development of the land for which it was subdivided is to be taken into account when determining whether the subsequent development exceeds the NSW Biodiversity Offset</p> |

| Internal Referral Body | Comments |
|------------------------|---|
| | <p>Scheme threshold. In addition, conditions of consent are provided that limit any clearing of any vegetation as part of the subdivision.</p> <p><u>Referral 02 dated 23.11.2021</u></p> <p>The applicant is referred to the Office of Environment & Heritage document "Guidance for local government on applying the Biodiversity Offset Scheme threshold" dated 9 July 2019. Council has based their position on the contents of this guidance document, including review of the relevant sections of the Biodiversity Conservation Act , BC Regulation and the EP & A Act. Clause 7.1(3) of the BC Regulation is most relevant, and states that " If proposed development is or involves the subdivision of land, the subdivision is taken to involve the clearing of native vegetation that, in the opinion of the relevant consent authority or other planning approval body, is required or likely to be required for the purposes for which the land is to be subdivided. Once that clearing has been taken into account, the clearing for the purposes of the subsequent development of the land for which it was subdivided is not to be taken into account when determining whether the subsequent development exceeds the threshold."</p> <p>The applicant is to address the requirements previously outlined in the original referral response, and as well include a Site Plan indicating the likely footprint of the future development for which the subdivision is proposed, including, but not limited to, clearing to construct buildings as well as associated asset protection zones, fence lines, driveways and services. While the applicant states that the current application is a paper subdivision and no vegetation clearing is required, the SEE and Plans for the previously approved development, and the <u>subdivision</u> application, indicate future development is proposed within the other portions of the site.</p> <p>The response provided from Travers, includes a map of remnant native vegetation located in the northern portion of the land (Figure 2) that is proposed Lot 2. This figure is not relevant to the determination of native vegetation within the site, as native vegetation is defined in the Local Land Services Act, and would therefore cover a larger portion of the site than the northern portion indicated. Reference to figure 1.7 of the BDAR may be more relevant. The BDAR also shows vegetation that will be impacted from the approved development, and as no fence, whether or not on the proposed subdivision boundary between proposed Lots 2 & 3, it is unclear if this potential impact to vegetation has been offset or not. A detailed review of the court cases cited has not been conducted with respect to the planning legislation, however on brief inspection neither case appears to consider the NSW Biodiversity Conservation Act, and pre-date the commencement of that legislation with NSW.</p> <p>I also note that the approved BDAR may potentially be subject to review as part of a Modification of the approved development. While this can be considered independently of the subdivision application,</p> |

| Internal Referral Body | Comments |
|--------------------------------|--|
| | <p>the applicant could also consider provision of one BDAR as part of the subdivision application for the entire site. This BDAR could propose the staged retirement of credits for the (modified) development occurring predominately within proposed Lot 1, and subsequent development of the other two lots.</p> <p><u>Original Referral 10.09.2021</u></p> <p>Entry to the NSW Biodiversity Offset Scheme (BOS) is triggered by developments that meet certain thresholds for significant impacts on biodiversity, including local development that triggers the BOS threshold or is likely to significantly affect threatened species based on the test of significance in section 7.3 of the <i>Biodiversity Conservation Act 2016</i>.</p> <p>The area threshold varies depending on the minimum lot size. The minimum lot size associated with the property is <1 hectare, and the threshold for native vegetation clearing, above which the BAM and offsets scheme applies, is 0.25 ha or more.</p> <p>As set out in section 7.1(3) of the Biodiversity Conservation Regulation 2017, if proposed development is or involves the subdivision of land, the subdivision is taken to involve the clearing of native vegetation that, in the opinion of the relevant consent authority or other planning approval body, is required or likely to be required for the purposes for which the land is to be subdivided. Once that clearing has been taken into account, the clearing for the purposes of the subsequent development of the land for which it was subdivided is not to be taken into account when determining whether the subsequent development exceeds the threshold.</p> <p>Based on statements contained within the SEE, such as "The proposal seeks to segregate the Subject Site to facilitate land for the approved built-form and operations from non-developed area for the future development", in the opinion of Council that clearing likely to be required may exceed 0.25 hectares and therefore a Biodiversity Development Assessment Report (BDAR) may be required.</p> <p>The applicant is to provide further evidence in relation to the BOS triggers, and submit a BDAR in accordance with the legislative requirements and the Biodiversity Assessment Method if required. It is noted that DA2019/1346 included a BDAR, and the consent for that development included a biodiversity offset credit obligation, and the relationship of the current application and the previous consent should also be provided.</p> |
| NECC (Development Engineering) | <p>SUPPORTED</p> <p><u>Final Comments 2/2/2022</u></p> <p>The applicant has now provided a survey which has confirmed that the existing Council stormwater drainage line and watercourse traversing the site will be located wholly on proposed lot 2.</p> |

| Internal Referral Body | Comments |
|--|--|
| | <p>Easements for drainage will be required and a ROW for Council to access the stormwater line for maintenance this is also consistent with the previous conditions of DA2019/1346. No objections subject to conditions.</p> <p><u>Previous Comments:</u> The previously comments in relation to a detailed property survey including levels to AHD has not been submitted. Accordingly the subdivision application is not supported.</p> <p><u>Original comments</u> The proposed subdivision is not supported with reference to the former Warringah DCP subclause C1 Subdivision for the following reasons: 1) The applicant is to submit a detailed survey plan prepared by a registered surveyor that details all buildings ,accessways, hardstand areas , Council drainage infrastructure(Pits ,pipes ,culverts) /open water courses in relation to the proposed subdivision boundaries. 2) Council requires the creation of stormwater drainage easements in favour of Council over Councils stormwater infrastructure . Please refer to Councils Water management policy for development for the required easement widths. Any proposed easements are to be detailed on the proposed subdivision plan.</p> |
| NECC (Riparian Lands and Creeks) | |
| Strategic and Place Planning (Heritage Officer) | HERITAGE COMMENTS SUPPORTED |
| | Discussion of reason for referral |
| | <p>This application has been referred as the site contains a number of heritage items, being <i>Item 152 - Roche Building; Item 153 - Givaudan-Roure Office and Item 138 - Trees-Campbell Avenue</i>. These 3 items are listed as local heritage items in Schedule 5 of Warringah Local Environmental Plan 2011.</p> |
| | Details of heritage items affected |
| | <p>Details of these heritage items, as contained within the Warringah Heritage Inventory, are: <i>Item 152 - Roche building</i> <u>Statement of Significance</u> A substantial & excellent example of an industrial complex in the late 20th Century international style. Displays high degree of integrity. One of first industrial complexes set in substantial landscaped grounds. Socially significant due to landmark nature <i>Item 153 - Givaudan-Roure office</i> <u>Statement of Significance</u> A representative example of an inter-war dwelling. Displays good integrity with much original fabric. Historically it is a rare survivor of development of this area prior to</p> |

| Internal Referral Body | Comments | | |
|------------------------|---|----|--|
| | <p>release & development for industrial purposes.</p> <p><i>Item 138 - Trees, Campbell Ave</i></p> <p><u>Statement of Significance</u></p> <p>The collection of trees in the south-east sector of the Roche Products site, facing South Creek Rd and Campbell Ave at Dee Why have a moderate degree of heritage significance at the Local level.</p> <p>They have existed on this site since the turn of the 19th -20th century and may have been associated with the nurseryman Charles Hirsch who owned the land immediately to the north during that period.</p> <p>They are esteemed by local residents and confer on the area a distinctive sense of place. While the trees are not individually rare, the presence in Dee Why of such a mixed collection of trees in good condition and representing planning takes of their period is rare.</p> | | |
| | Other relevant heritage listings | | |
| | Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 | No | |
| | Australian Heritage Register | No | |
| | NSW State Heritage Register | No | |
| | National Trust of Aust (NSW) Register | No | |
| | RAIA Register of 20th Century Buildings of Significance | No | Roche building previously on the Register - also included within RAIA publication - 444 Sydney Buildings |
| | Other | No | |
| | Consideration of Application | | |
| | <p>This application proposes Torrens title subdivision of the former Roche industrial estate. The former Roche industrial site consists of 1 large allotment with frontages to Inman Road, South Creek Road and Campbell Parade. This application proposes divide this lot to create 3 lots, one containing the newly approved industrial/warehouse complex fronting Inman Road; one small lot on the corner of Orlando Road and a third lot being the remainder of the site, with frontage to Campbell Parade and South Creek Road.</p> <p>As a subdivision application, no physical works are proposed and therefore there is no physical impact upon any of the listed heritage items. However, as a result of this subdivision, the 3 heritage items will be located on different lots. The former Roche buildings and tower (incorporated into the new development) will be located on</p> | | |

| Internal Referral Body | Comments | | |
|------------------------|--|------------------|--|
| | <p>the new proposed Lot 1. Lot 2 will contain the Givaudan-Roure Office (fronting South Creek Road) and the heritage listed trees located on the eastern portion of the current site. Lot 3 will contain no heritage items.</p> <p>It is understood that this subdivision proposal does not include any physical works and therefore there will be no impact upon the identified heritage items on site.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of WLEP 2011:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? Provided with previous application Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? No - but heritage addressed in SEE</p> <table><tr><th>Further Comments</th></tr><tr><td></td></tr></table> | Further Comments | |
| Further Comments | | | |
| | | | |
| Traffic Engineer | <p>SUPPORTED</p> <p>The subdivision plans and accompanying traffic statement have been reviewed. All 3 proposed lots appear to be of a size and configuration that would allow for a appropriate vehicle access and parking to be provided.</p> <p>It is noted that DA2019/1346 has been approved for lot No.1 with two vehicle access points to South Creek Road and three to Inman Road. No details with regard to intended vehicular access have been provided for Lots 2 & 3 however the there is suitable opportunity for safe vehicular access to be provided to these lots and this would be reviewed when DA's for those lots are lodged. Proposed lot 2 has a side frontage to Campbell Avenue north of South Creek Road. This section of Campbell Avenue is residential on its eastern side and has a kerb to kerb width of approximately 7m with parking currently permitted on both sides of the road. This section of road is considered unsuitable for access by heavy vehicles and, if access is proposed off this part of Campbell Ave it should only be for light vehicles (eg to a staff parking area). This will be conditioned.</p> <p>No details of rights of carriageway benefiting on lot over another have been outlined and should not be required given the size and configuration of the lots. All lots should provide their own vehicular access and parking areas.</p> | | |
| External Referral Body | Comments | | |
| | | | |

| External Referral Body | Comments |
|------------------------|--|
| Ausgrid: (SEPP Infra.) | The proposal was referred to Ausgrid who advised that a decision was not required. |

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 industrial purposes for a significant period of time. The south-western portion of the site is declared as significantly contaminated land (declaration number 20161101) and is regulated by the Environmental Protection Authority (EPA) under the Contaminated Land management Act 1997 (CLM Act). The site is being remediated under an EPA agreed Voluntary Management Plan (VMP) (VMP approval no. 20191730).

Conditions are included in the consent for DA2019/14 requiring the appropriate management of contamination of the site including site investigation and submission of a Remediation Action Plan (RAP).

The application was referred to the EPA who confirm that as the DA is solely seeking approval of a subdivision it reiterates Council's requirement to consider State of the Environment Planning Policy (SEPP55) and Remediation of Land when considering the proposal. The EPA also notes that if, during redevelopment works, contamination is identified which triggers a duty to notify contamination to the EPA under the CLM Act on portions of the land which are not already declared as significantly contaminated, the owner and polluter have a duty to notify the EPA of the contamination as soon as possible. Council's Health Officer has reviewed the referral response from the EPA and support the application subject to a condition requiring the EPA to be notified if contamination is identified during any development works. Subject to this condition, the proposal satisfies the requirements of SEPP 55.

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? | Yes |
| | |

| | |
|-----------------------------|-----|
| zone objectives of the LEP? | Yes |
|-----------------------------|-----|

Principal Development Standards

| Standard | Requirement | Proposed | % Variation | Complies |
|-------------------------------|---|--|-------------|----------|
| Minimum subdivision lot size: | The Site is subject to a minimum lot size of 4,000m ² . No lots are proposed that are under the applicable minimum lot size. | Lot 1 - 36,527m ² Lot 2 - 32,728m ² and Lot 3 - 5,420m ² | N/A | Yes |

Compliance Assessment

| Clause | Compliance with Requirements |
|--|------------------------------|
| 2.6 Subdivision - consent requirements | Yes |
| 5.10 Heritage conservation | Yes |
| Schedule 5 Environmental heritage | Yes |

Warringah Development Control Plan

Built Form Controls

| Built Form Control | Requirement | Proposed | % Variation* | Complies |
|----------------------------|------------------|---------------------|--------------|----------|
| B5 Side Boundary Setbacks | Merit Assessment | No details provided | N/A | N/A |
| B7 Front Boundary Setbacks | 4.5m | No details provided | N/A | N/A |
| B9 Rear Boundary Setbacks | Merit Assessment | No details provided | N/A | N/A |

***Note:** The application is for sub-division only, consideration of the built form controls is not therefore relevant under this application.

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| A.5 Objectives | Yes | Yes |
| C1 Subdivision | Yes | Yes |
| C3 Parking Facilities | Yes | Yes |
| C6 Building over or adjacent to Constructed Council Drainage Easements | Yes | Yes |

Detailed Assessment

C1 Subdivision

| Component | Requirement | Proposed. | Compliant |
|-----------|---------------------------------|-------------------------------|-----------|
| Lot | R2 Low Density Residential zone | The site is zoned IN1 General | N/A |

| | | | |
|---------------------|--|--|-----|
| requirements | <p>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> | Industrial and therefore this control is not relevant. | |
| Access | <p>Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.</p> <p>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.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.</p> <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>The proposed sub-division is for industrial purposes and not residential.</p> <p>Notwithstanding this it is noted that there is no change to the access to lot 1 approved under DA2019/1346. A Traffic Report submitted with the subject application also refers to the provision of access points for lots 2 and 3. Council's Transport Officer notes that lot 2 has a side frontage to Campbell Street which adjoins a residential development and this section of road is considered unsuitable for access by heavy vehicles. A condition is therefore included in the recommendation restricting heavy vehicular access from lot 2.</p> | Yes |

| | <p>Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.</p> <p>Width of accessways are to be as follows:</p> <table><tr><th>Number of lots to be serviced</th><th>Width of clear constructed accessway (m)</th></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><th>Number of lots to be serviced</th><th>Additional width to be provided in Right of Carriageway (m)</th></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 | | |
|--------------------------------|---|--|--|-------|-----|--------|-----|-----------------|---|-------------------------------|---|--------------|-----|----------------|-----|--|--|
| 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 | | | | | | | | | | | | | | | | |
| 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</p> | <p>The proposal is only for subdivision, no physical works are proposed relating to roads, rights of carriageway or drainage design and construction. Despite this the applicant has provided a survey which confirms that the existing stormwater drainage line and watercourse traversing the site will be located wholly on proposed lot 2. Council's</p> | <p>Yes</p> | | | | | | | | | | | | | | |

| | | | |
|---|---|---|-----|
| | <p>Design Policy. Additionally, internal roads must be designed in accordance with the relevant 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> | Development Engineer offers no objections subject to conditions requiring easements for drainage. | |
| 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> | The proposal is only for subdivision, no physical works are proposed relating to roads, rights of carriageway or drainage design and construction. Issues relating to stormwater drainage are address by condition, refer above. | Yes |
| Restrictions | 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 covenant or like instrument with the Council nominated as a party. | All restrictions are noted. | Yes |
| 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> | Portions of the site are subject to landslip risk. The applicant notes that the lots have been designed to ensure the safe, ongoing use of existing buildings for the purpose of industry and any future development that might occur. Issues relating to biodiversity have also been address with the submission of additional information confirming that there will be no clearing of vegetation. Conditions are | Yes |

| | | | |
|-----------------|--|---|-----|
| | | recommended requiring the preparation of a native vegetation and tree protection fencing plan, no clearing of vegetation and the continued compliance of the Natural Environment conditions approved under DA2019/1346. | |
| 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 site is not mapped as being Bushfire Prone land. | N/A |

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

- *To regulate the density of development.*

Comment:

The subject application is for subdivision only the density of any future development will be considered under any future development application.

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

Comment:

Refer above, Biodiversity conditions are recommended to ensure the protection of native vegetation, wildlife and habitats.

- *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:

The subject application is for industrial subdivision therefore consideration of private open space is not relevant. Conditions are included in the recommendation requiring an easement for drainage and a restriction on heavy vehicular access to lot 2. The details assessment of issues pertaining to drainage, services and access will be considered in detail under any future DA for the respective lots. .

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

Comment:

This objective is not relevant given that no residential dwellings are being proposed.

- *To maximise the use of existing infrastructure.*

Comment:

The use of existing infrastructure has been considered, refer to the comments from Council's Development Engineer in the Referral section of this report.

- *To protect the amenity of adjoining properties.*

Comment:

The detailed consideration of potential impacts on adjoining properties will be considered under any future development application for the lots.

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

Comment:

The site is not bushfire prone or flood affected. Issues relating to landslip will be considered under the assessment of any future development application for the lots.

Having regard to the above assessment, it is concluded that the proposed development is consistent 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

Currently parking is located at grade on the site and there is no change to the approved car parking under DA2019/1346. Should Lots 2 and 3 be re-developed in the future, consideration of any additional need for car parking required to serve these lots will be considered under separate development applications.

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, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/1464 for Subdivision of existing land into three (3) allotments on land at Lot 1 DP 1220196, 4 - 10 Inman Road, CROMER, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|---|--------------|--------------------|
| Drawing No. | Dated | Prepared By |
| Plan of subdivision of Lot 1 DP1220196 Issue 2 sheet 1 and 2 | 12.08.2021 | LTS |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|---|--------------|--------------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Transport Letter | 13/08/2019 | GTA Consultants |

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

| Other Department, Authority or Service | EDMS Reference | Dated |
|--|-----------------------|------------|
| NSW Environmental Protection Authority (EPA) | EPA Referral Response | 28.09.2021 |

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

3. Preparation of Native Vegetation and Tree Protection Fencing Plan

A Native Vegetation and Tree Protection Fencing Plan is to be prepared detailing the location and type of temporary vegetation protection fencing within the site. The fencing is to prevent access, parking, storage of materials and any other activities related to the construction within proposed Lot 2 that may potentially impact native vegetation, as defined under s60B of the Local Land Services Act 2013, within the site. The fencing is to be located to prevent the clearing or damage to native vegetation, as defined under s60C of the Local Land Services Act 2013, located within proposed Lots 1 and 3.

The fencing is to be located along the entire eastern extent of works approved under DA2019/1346 within proposed Lot 3. The Plan is to be prepared by a registered surveyor and provided to the Certifying Authority prior to the issue of the Subdivision Works Certificate.

Reason: To protect native vegetation, wildlife and habitats.

4. No Clearing of Vegetation

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Subdivision Works Certificate.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to issue of Subdivision Works Certificate.

Reason: To protect native vegetation.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

5. **Sub-division only no works approved**

No approval is granted under this Development Consent for any changes to natural features, including clearing of vegetation (unless otherwise exempt) or physical work. Separate Development Applications must be submitted to Council for the future development of the lots.

Reason: To ensure compliance with the relevant Local Environmental Plan.

6. **Vehicular access to lot 2**

No vehicular access for trucks shall be provided from Campbell Ave to Lot 2. If vehicle access is provided to lot 2 from Campbell Avenue it shall only be for light vehicles and only to lot No.2.

Reason: residential amenity and safety.

7. **Vehicular Access**

Each lot shall have its own point(s) of vehicular access and internal access roads and/or parking areas to cater for forwards entry and exit from each lot by all vehicles accessing each lot. The minimum road width for a two way internal access road for light vehicle access is 5.5m on straight sections and widening on curves based on individual lanes. One way systems require a minimum width of 3.5m. Access and circulation road widths for heavy vehicle access are to be designed to meet minimum requirements as outlined in AS2890.2. Bush Fire Zone related controls are to apply where necessary. Details demonstrating compliance with above shall be provided with any subsequent DA.

Reason: To ensure suitable access and reduce vehicular conflicts.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE

8. **Right of Carriageway**

The Applicant shall create a right of carriageway (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument a minimum of 3.5 metres wide along the adjoining driveway to the east of the existing Council drainage line for its full length maintenance purposes. A Right of Access shall be in favour of Council. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

9. **Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to

be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure compliance with the statutory requirements of Sydney Water.

10. **Easement for Drainage**

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all Council drainage infrastructure including pits, pipes and culverts is located within the appropriate Council easement(s). Easement widths are to be in accordance with Councils water management policy for development.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

11. **Easement to Drain Water - Channel/Floodways**

The Applicant shall create an easement to drain water in favour of Council over the watercourse /floodway to encompass the 1 in 100 year AEP frequency predicted water surface level. The easements are to be detailed on the final plan of subdivision.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To identify flood affected areas on the property title.

12. **Easement for Services**

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

13. **Release of Subdivision Certificate**

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

14. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

15. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure proper management of land.

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

Signed



Anne-Marie Young, Planner

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



Steven Findlay, Manager Development Assessments