

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/0953
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<b>Responsible Officer:</b>	Maxwell Duncan
<b>Land to be developed (Address):</b>	Lot 2 DP 18022, 52 Abbott Road NORTH CURL CURL NSW 2099
<b>Proposed Development:</b>	Demolition works and subdivision of one lot into two lots
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Leigh Raymond Thatcher Wendy Robyn Thatcher
<b>Applicant:</b>	Wendy Robyn Thatcher

<b>Application Lodged:</b>	30/06/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	07/07/2021 to 21/07/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 75,000.00
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### PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for demolition works and Torrens title subdivision of one allotment into two allotments:

The proposed lot sizes are as follows:

**Lot 1 (Front):** 464.8m<sup>2</sup> (562.9m<sup>2</sup> excluding the access corridor)

**Lot 2 (Rear):** 663.5m<sup>2</sup>

The existing dwellings house are to remain, with new at grade off-street parking to both lots. The application proposes to demolish the existing garage and carport.

## 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 - B5 Side Boundary Setbacks

Warringah Development Control Plan - C1 Subdivision

Warringah Development Control Plan - C2 Traffic, Access and Safety

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 18022 , 52 Abbott Road NORTH CURL CURL NSW 2099
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Abbott Road, North Curl Curl.</p> <p>The site is regular in shape with a frontage of 11.9m along Abbott Road and a depth of 50.29m. The site has a surveyed area of 1226.3sqm</p> <p>The site is located within the R2 Low Density Residential zone and accommodates two dwellings apart of approved dual occupancy development.</p> <p>The site slopes from the rear towards the street approximately 3m.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by residential development to the east and west, Curl Curl</p>

North Public School to the north and John Fisher Park Field.

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:

- **Development consent 87/464** was approved by Warringah Council on 17 December 1987 for 'erection of the second dwelling house for dual occupancy'.
- **Development consent 96/128** was approved by Warringah Council on 6 May 1996 for 'alterations and additions to an existing dwelling within a consented dual occupancy'.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination

Section 4.15 Matters for Consideration'	Comments
	risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;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&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the accessway</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter may be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter may be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> 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) <b>Social Impact</b></p>

Section 4.15 Matters for Consideration'	Comments
	<p>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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	<p>This assessment has found the proposal to be contrary to the relevant requirement(s) of the vehicular access non-compliance and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.</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 07/07/2021 to 21/07/2021 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 of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is for the torrens title subdivision of one lot into two lots, including demolition of existing carport and garage, alterations and additions to the existing access driveway, civil works involving stormwater, new vehicle access arrangements including but not necessarily limited to access way, turning areas, passing bay, and construction of two 6m x 6m car parking hardstands, 1 within each proposed allotment.</p> <p>Council's Landscape Referral is assessed against Warringah Local</p>

Internal Referral Body	Comments
	<p>Environmental Plan, and the following Warringah Development Control Plan controls:</p> <ul style="list-style-type: none"> <li>• C1 Subdivision</li> <li>• D1 Landscaped Open Space and Bushland Setting</li> <li>• E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation</li> </ul> <p>Existing prescribed trees (protected under the Warringah DCP) within the site are not impacted by the subdivision. There are existing Exempt Species (in this case Palms) within Lot 2 that will be required to be removed for the construction of the car parking hardstand, and these are not subject to Council consent under the Exempt provisions. All other existing trees that are not Exempt Species shall be retained, ie. prescribed vegetation 5 metres and over.</p> <p>Existing trees and vegetation within adjoining properties shall be protected during subdivision works, and conditions of consent shall be imposed.</p> <p>Landscape Referral raise no objections to the subdivision proposal.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of:</p> <p>Supplied plans and reports Relevant LEP, DCP and SREP Coastal Management Act Coastal Management SEPP</p> <p>It meets the relevant coastal objectives.</p>
NECC (Development Engineering)	<p>2nd Development Engineering response (16/9/2021)</p> <p>In this submission, the consultant proposed a 3.35 m wide accessway between two existing buildings in No.52 and No. 50.</p> <p>Firstly, the proposed 3.35 m wide accessway is inconsistent with the submitted survey plan. It showed the distance between two building is only about 3.2 m wide.</p> <p>The distance between the ROW and the building is 0.4 m and 0.36 m in accordance with the DP 641453.</p> <p>Second, it is unclear that all attached structures on the side of the buildings, such as stormwater downpipe and security window frame etc, will be located outside the proposed 3.35 m wide accessway.</p> <p>Finally, there is no evidence to show the owner of No. 50 agrees on the widening of the existing ROW.</p> <p>As such, Development Engineering cannot support the application as the clause C1 of Council's Warringah DCP.</p> <p>P.S Development Engineering would like to state that 3.5 m wide accessway must be provided in accordance with Council's Warringah DCP 2011.</p>

Internal Referral Body	Comments
	<p>The mentioned 3.2 m wide accessway in this submission was determined in the court proceeding.</p> <p>1st Development Engineering response The applicant proposed to subdivide the existing lot into 2. Development Engineering has reviewed the proposal. The application cannot be supported due to the proposed accessway doesn't comply with the clause C1 of Council's Warringah DCP2011.</p> <p>In accordance with the above DCP, the minimum width of the accessway must be 3.5 m. However, the proposed accessway is about 2.8 m wide.</p> <p>As such, the applicant cannot be supported due to the clause C1 of Council's Warringah DCP.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater.</p> <p>Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established. This application, subject to conditions, is recommended for approval as it is unlikely to have an adverse effect on the lagoon if conditions are adhered to.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed subdivision generally meets the flood controls in the LEP and DCP. The site is in a low flood risk precinct and as such is not subject to floor level controls.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

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

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

### SEPP 55 - Remediation of Land

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

### SEPP (Infrastructure) 2007

#### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

#### Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

### SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

#### 13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped*

- headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) *Aboriginal cultural heritage, practices and places,*
  - (g) *the use of the surf zone.*

Comment:

The development is located within the coastal environment area. The development will not result in any adverse impact on the items within (1)(a)-(g).

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
  - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The proposed development is not likely to adversely impact the environmental and cultural values of the 'Coastal Environment Area'.

## 15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposed development is not likely to cause increased risk of coastal hazards on the subject site and adjoining properties.

As such, it is considered that the application does/does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

## 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
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Minimum subdivision lot size:	Lot 1 and 2: 450sqm	<b>Lot 1: 464.8m2</b> <b>Lot 2: 663.5m2</b>	-	Yes
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#### Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires consent	Yes
4.1 Minimum subdivision lot size	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.4 Development on sloping land	Yes

### Warringah Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B5 Side Boundary Setbacks	0.9m	Lot 1: 0m Lot 2: 0m	100%	No
B7 Front Boundary Setbacks	6.5m	Lot 1: 7m (No Change)	-	Yes
B9 Rear Boundary Setbacks	6m	Lot 1: 8m Lot 2: 6m (No Change)	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	Lot 1: 37.2% (210.7sqm) Lot 2: 33.5% (222.3sqm)	16.25%	No

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C1 Subdivision	No	No
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D8 Privacy	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

#### Detailed Assessment

#### **B5 Side Boundary Setbacks**

##### Description of non-compliance

Clause B5 Side Boundary Setbacks of the WDCP 2011 require structures to be setback 0.9m from the side boundaries of a site.

The proposed at grade parking on both lot 1 and lot 2 have a nil (0m) setback to the western property boundary. This represents a 100% variation to the numeric control.

Further, the off-street parking parking on lot 2 is setback 0.9m from the battle-axe property boundary that separates Lot 1 and 2, consistent with the numeric control.

##### Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

##### Comment:

Whilst numerically non-compliant with Clause D1 of WDCP 2011, the proposal results in reasonable levels landscaped open space on the site through the removal of the redundant existing parking structures. It is considered that adequate and existing opportunities for deep soil landscaped areas are provided for on the site.

- *To ensure that development does not become visually dominant.*

Comment:

The proposed off-street parking is located at ground level and will not be visible from the street.

- *To ensure that the scale and bulk of buildings is minimised. .*

Comment:

The proposed off-street parking is not considered to be excessive in its bulk or scale.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The proposed development provides suitable amenity to adjoining sites and retains suitable amenity for the site itself. The proposed development is compliant with the requirements of the relevant privacy, amenity, and solar access clauses of the Warringah DCP 2011, as noted within this report

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The proposal will not result in the loss of views

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of 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.

## C1 Subdivision

Component	Requirement	Proposed	Compliant
<b>Lot requirements</b>	R2 Low Density Residential zone requirements:  Proposed new allotments:  a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m <sup>2</sup>	<b>Lot 1</b> Width - 11.9m Depth - 50.29m Building area - complies  <b>Lot 2</b> Width - 12.19m Depth - 50.29m Building area - complies	<b>No</b> - Refers to discussion below this table.
<b>Access</b>	Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.  Where access is proposed to a	A shared access along the right of carriageway parallel to the east boundary of Lot 1 is proposed. The access is non-complaint at 2.88m - 3.348 wide, and no ability to provide the required 3.5m clear	<b>No</b> - Refer to discussion below this table.

section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.

Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.

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.

Driveways in excess of 200 metres will not be allowed for residential development.

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.

Passing bays should have regard to sight conditions and minimise vehicular conflict.

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.

Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.

Width of accessways are to be as follows:

Number of lots to be serviced	Width of clear constructed accessway (m)
1 - 5	3.5
6 - 10	5.0

constructed accessway due to the current siting of the existing dwelling house, which is to be retained.

As a result Council's Development Engineers cannot support the application.

	<table><tr><td>in excess of 10</td><td>Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)</td></tr></table> <p>Provision of services in rights of carriageway are as follows:</p> <table><tr><td>Number of lots to be serviced</td><td>Additional width to be provided in Right of Carriageway (m)</td></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>	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		
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 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>	Complies	Yes								
Drainage	Provision should be made for each allotment to be drained by	Complies	Yes								

	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.		
<b>Restrictions</b>	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.	Council is not a position to approve the subdivision as result of the access non-compliance.	<b>No</b> - Refer to discussion below this table.
<b>Environmentally constrained land</b>	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.  Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	The site is located in a low level flood precinct. The proposal meets the flood controls within the Warringah LEP 2011 and DCP 2011.	<b>Yes</b>
<b>Bushfire</b>	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 located within bushfire prone land	<b>Yes</b>

#### Description of non-compliance

The development does not comply and/or is inconsistent with the access component of Clause C1. The development does not provide for the required spatial distance for the shared access along the driveway (right of carriageway). The access is non-compliant with varied widths of 2.8m - 3.0m with no

ability to provide the required 3.5m without substantial changes to the existing dwelling house. Therefore, the non-compliant spatial distance is up to 0.7m

With respect to 'Lot Requirements', the development provides for a lot width of 11.9m (Lot 1) 12.19m (Lot 2) which is below the 13m requirement measured from the west boundary to the edge of the right-of-way.

#### Merit consideration

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

- *To regulate the density of development.*

#### Comment:

The existing dwelling houses depicted on the subdivision plan indicate that the resulting allotments could comfortably accommodate reasonably sized dwellings that would comply with Council's relevant planning controls. Therefore, Council can be satisfied that the minor lot width non-compliance will not prevent a suitable dwellings from being constructed on Lots 1 and 2.

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

#### Comment:

The site does not involve the removal any significant natural features. Any new dwellings proposed under future applications will have to comply with Clause E6 'Retaining unique environmental features' of the WDCP 2011.

- *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 subdivision plan indicates that there could be sufficient area for landscaping, private open space, drainage, utility services to and from the site, for both Lots. However, the proposal does not demonstrate compliant vehicular access widths to ensure suitable vehicular access to and from the site.

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

#### Comment:

The proposed subdivision is unlikely to create an unreasonable degree of overshadowing.

The development is considered to be consistent with this objective.

- *To maximise the use of existing infrastructure.*

#### Comment:

The subdivision is unlikely to create any adverse impact upon the existing infrastructure in and around the site.

The development is considered to be consistent with this objective

- *To protect the amenity of adjoining properties.*

Comment:

The works do not involve the construction of new dwellings on Lots 1 or 2, with the existing dwellings to remain. Nevertheless, it is considered that a well designed, fully compliant dwelling on the resulting allotments will be able to protect the amenity of adjoining properties.

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

Comment:

The site is not located in or near to bushfire prone. As discussed above the proposal is consistent with the relevant flood controls under the Warringah LEP 2011 and DCP 2011

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of this clause and accordingly, the proposal is not supported in this particular circumstance.

## **C2 Traffic, Access and Safety**

Council's is not satisfied with the design of the proposed driveway as discussed by Council's Development Engineer, the accessway to lot 2 fails to provide suitable vehicular access. In this regard, Council is not satisfied the proposed development meets the requirements of Control C2 and is therefore recommended for refusal based on non-compliance with this control.

## **D1 Landscaped Open Space and Bushland Setting**

### Description of non-compliance

The control requires a minimum of 40% of the total site area be landscaped open space.

The proposed subdivision results in the following:

**Lot 1:** 37.2% (210.7sqm) - 7% variation to the numeric control.

**Lot 2:** 33.5% (222.3sqm) - 16.25% variation to the numeric control.

### Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The proposed lot configuration allows opportunity for landscaped area in the front of the dwellings. This ensures opportunity for planting which can be viewed from the street.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The site does not have any significant topographical features such as rock outcrops and habitats for wildlife, nor does it propose to remove significant indigenous vegetation.

- *To provide for landscaped open space with dimensions that are sufficient to enable the 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.*

Comment:

Landscaped area is maintained to surround the existing dwellings and allow for 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.

- *To enhance privacy between buildings.*

Comment:

The proposal maintains sufficient setbacks and physical separation between neighbours, including the buffer of the access way to the south of the site.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The proposed development allows for suitable outdoor recreation opportunities for residents.

- *To provide space for service functions, including clothes drying.*

Comment:

The existing dwelling maintains areas to the front and rear of the site which allow for service functions.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

The proposal would allow for suitable drainage, subject to conditions if this application is to be approved.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this control and accordingly, the proposal is supported in this particular circumstance.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2021**

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

## **CONCLUSION**

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

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

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

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

- Inconsistent with the objectives of the DCP
- 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 does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## **RECOMMENDATION**

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2021/0953 for the Demolition works and subdivision of one lot into two lots on land at Lot 2 DP 18022,52 Abbott Road, NORTH CURL CURL, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1 Subdivision of the Warringah Development Control Plan.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C2 Traffic, Access and

Safety of the Warringah Development Control Plan.

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

**Signed**



**Maxwell Duncan, Planner**

The application is determined on 11/10/2021, under the delegated authority of:



**Rebecca Englund, Acting Development Assessment Manager**