

STATEMENT OF ENVIRONMENTAL EFFECTS

**Community Title Land
Subdivision of 1 lot
into 2 lots**

**50 Condoever Street,
North Balgowlah**

Suite 1, 9 Narabang Way Belrose NSW 2085

Phone: (02) 9986 2535 | Fax: (02) 9986 3050 | www.bbfplanners.com.au

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RESPONSIBLE FOR THIS REPORT:

Michael Haynes

Director - BBF Town Planners

Master Urban and Regional Planning Sydney University

July 2021

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1 Introduction

1.1 Description of the proposed development

This report is a Statement of Environmental Effects (SEE), pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979.

The development application seeks consent for a Community Title land subdivision of the property at 50 Condoever Street, North Balgowlah. The proposal is to demolish the existing dwelling house and subdivide the land from 1 lot into 2 lots, each with their own street frontage and separate vehicle access.

The proposal is depicted in the accompanying plans by McGregor+Coxall and Stellen Civil Engineers. A summary of the key aspects of the proposal are noted as follows:

- Demolition of existing dwelling house
- Subdivision of the land from 1 Torrens Title lot into 2 Community Title lots
- Lot 1 has frontage to, and access from, Kimo Street
- Lot 2 has frontage to, and access from, Condoever Street
- A community lot (Lot 3) is proposed to accommodate inter-allotment drainage, and if necessary, utility services, from Lot 1 to Condoever Street.

The proposed allotments will have the following characteristics:

Proposed Lot 1 - accessed from Kimo St	
Lot area	438 m ²
Lot width	Variable - 13.7m (at street frontage) to approx. 22m at widest point near proposed rear boundary
Lot depth	Variable – 21.3m north side, 28m approx. south side 24.1m approx. centre of proposed lot
Indicative building area	Dwelling: 137.8 m ² Driveway and entry: 33 m ²

Proposed Lot 2 – accessed from Condoever St	
Lot area	410 m ² *
Lot width	Variable - 8.32m (at street frontage) 11.5 at the 6.5m front building line 18.2m approx. at the 6m rear building line 20.8m approx. at rear boundary

INTRODUCTION

Lot depth	Variable - 25.9m north side (27.3 at the 2m building line) 28.8m at approx. centre of proposed lot 33.4m approx. south side
Indicative building area	Dwelling: 112 m ² Driveway: 30 m ²
*the area is inclusive of the inter-allotment drainage easement (Lot 3 – 1m wide, 23.8m in length)	

The DA is accompanied and supported by conceptual plans for dwelling houses on each of the proposed lots (herein generally referred to as indicative dwelling house plans). The purpose of these plans is to demonstrate that the proposed subdivision can accommodate future dwelling houses. Development consent is not sought for these dwelling houses as part of the subject development application.

In summary, the proposed subdivision is assessed as:

- being compatible with the varied subdivision pattern of the area and responsive to the undulating topography of the land,
- satisfying the relevant planning controls applicable to subdivision.
- consistent with the planning controls for any future residential development of the subdivided land.

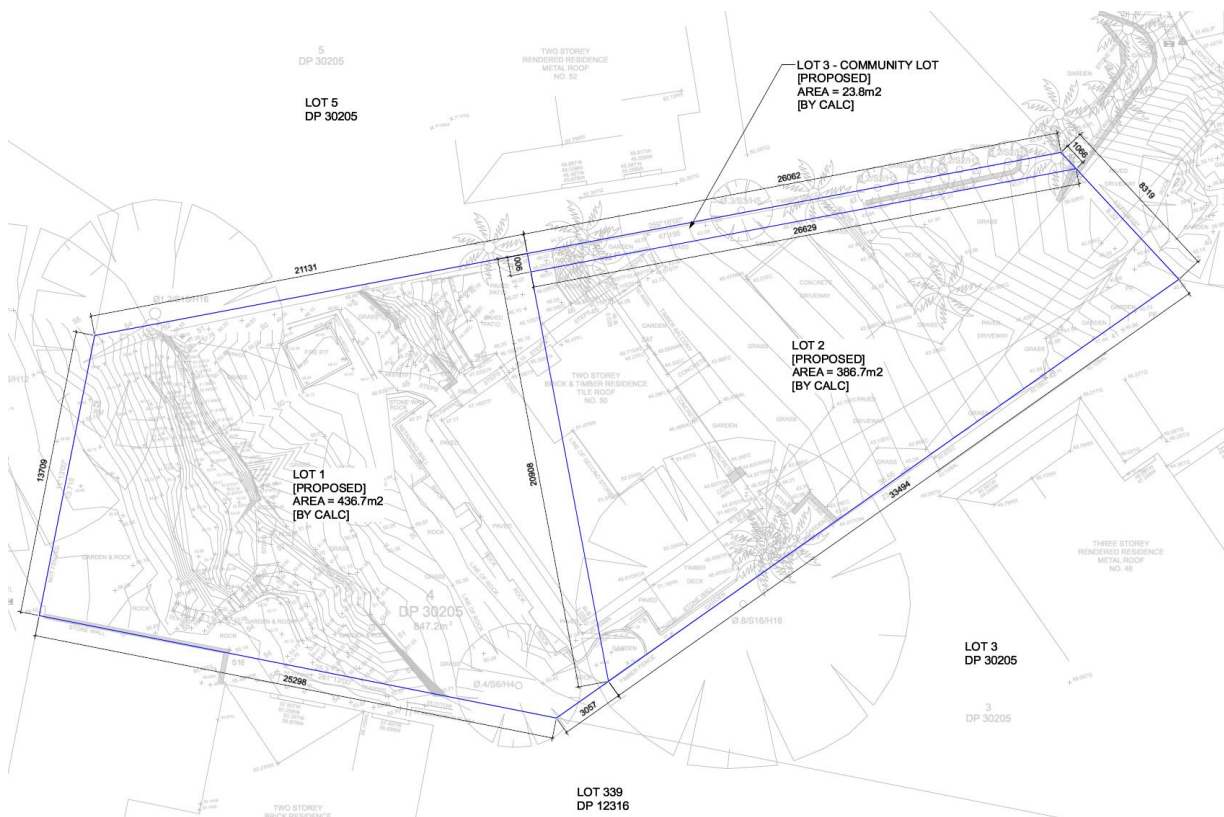


Figure A – proposed development – plan of subdivision

1.2 Pre-lodgement meeting PLM2021 0008

A Pre-DA lodgement meeting was held with Council officers in relation to proposed development of the site. The application has been prepared in response to the issues raised by Council and discussed at the meeting between the parties. The following changes and information responses are noted:

- Torrens Title land subdivision is not proposed.
- A Community Title subdivision is proposed in accordance with clause 4.1AA of the LEP.
- The site's environmental qualities regarding slope, trees, rock features, stormwater, and bushfire have been appropriately investigated and the proposed design has responded accordingly.
- Regard has been had to the planning principle within *Parrott v Kiama* [2004] NSWLEC 77 and indicative dwelling house plans are provided, for information purposes, with the DA. Regard has also been had for the planning principles established in the cases of:
 - *Wallis & Moore Pty Limited v Sutherland Shire Council* relating to good passive solar design of future dwellings, residential subdivision;
 - *Salanitro-Chafei v Ashfield Council* which addresses the relationship between density and residential character.

In these ways the subject application has addressed the issues raised by Council in response to the Pre-DA lodgement application.

1.3 Statement of Environmental Effects

This Statement of Environmental Effects (SEE) is prepared in response to Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal has been considered under the relevant provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979.

In preparation of this document, consideration has been given to the following:

- Environmental Planning and Assessment Act, 1979
- Local Environmental Plan
- Relevant State Environmental Planning Policies
- Development Control Plan

The proposal is permissible and generally in conformity with the relevant provisions of the above planning considerations.

Overall, it is assessed that the proposed development is satisfactory and the development application may be approved by Council.

2 Site Analysis

2.1 Site and location description

The site is located at 50 Condoever Street, North Balgowlah. The site is legally described as lot 4 in deposited plan 30205. The site has an area of 847m² (as per survey) and is irregular in shape with access to two streets, Condoever St to the north east and Kimo St to the south west.

The site is irregular in shape with frontage to Condoever Street of 8.32m (cul-de-sac and existing vehicle access point), the rear boundary to Kimo Street is 13.715m. The northern side boundary measures 47.195m and the southern side boundary 36.55m and 25.3m.

The land contains a one and two storey brick and timber dwelling house with tile roof.

The topography slopes away from Kimo Street to Condoever Street with a cross fall and level difference of approximately 15.6m between the rear and the front boundaries (approx. RL56 at the Kimo Street frontage down to RL40.4 at the Condoever Street boundary).

The site is located near the cul-de-sac at the northern end of Condoever St where the subdivision pattern is irregular, there are angular boundaries and variable setbacks.

The site is opposite Condoever Reserve, which is a relatively large area of recreational space. Furthermore, a large bushland reserve extends to the north containing Manly Dam; in recreational terms it comprises walking and mountain biking trails and offers visual amenity to the site.

The streetscape character is varied with a mix of building and housing types and scales and variable front setbacks. Surrounding development comprises a mix of detached residential dwellings, dual occupancies, and a duplex on various sized and shaped allotments. Development is of varying heights and scales comprising 1 to 3 storeys influenced by the sloping and undulating topography.

The figures on the following pages depict the character of the property and its existing development.

2.2 DA History

The following planning approval history is noted in relation to the subject application:

- Development consent DA2019/1122 was approved by Northern Beaches Council on 14 January 2020 for 'Alterations and additions to a dwelling house'. Regard has been had for some of the findings of the assessment as relevant to the site and the subject proposal.
- Development consent DA2003/1358 was submitted on 10 October 2003 for a Carport & Loft.

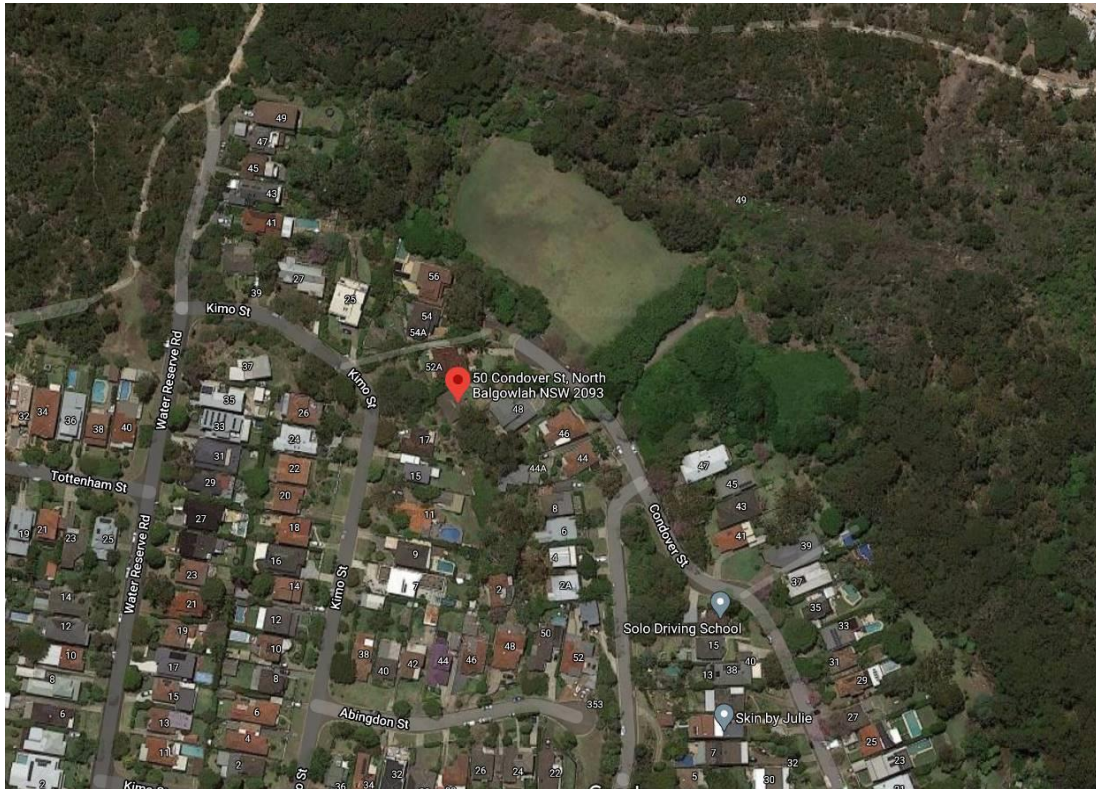


Figure 1 – Location of the site within its wider context (courtesy Google Maps)



Figure 2 – Alignment, orientation and spatial layout of the subject site, adjoining dwellings (courtesy Northern Beaches Council)

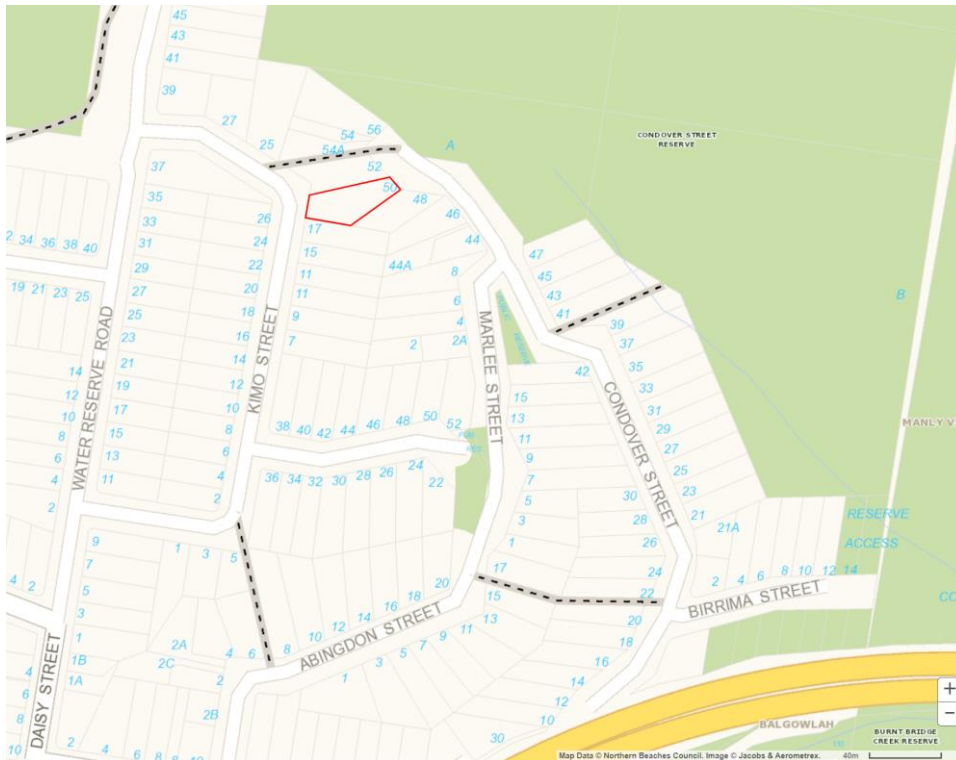


Figure 3 – the subject site the allotment patten within the local area and open space reserve to the north and east

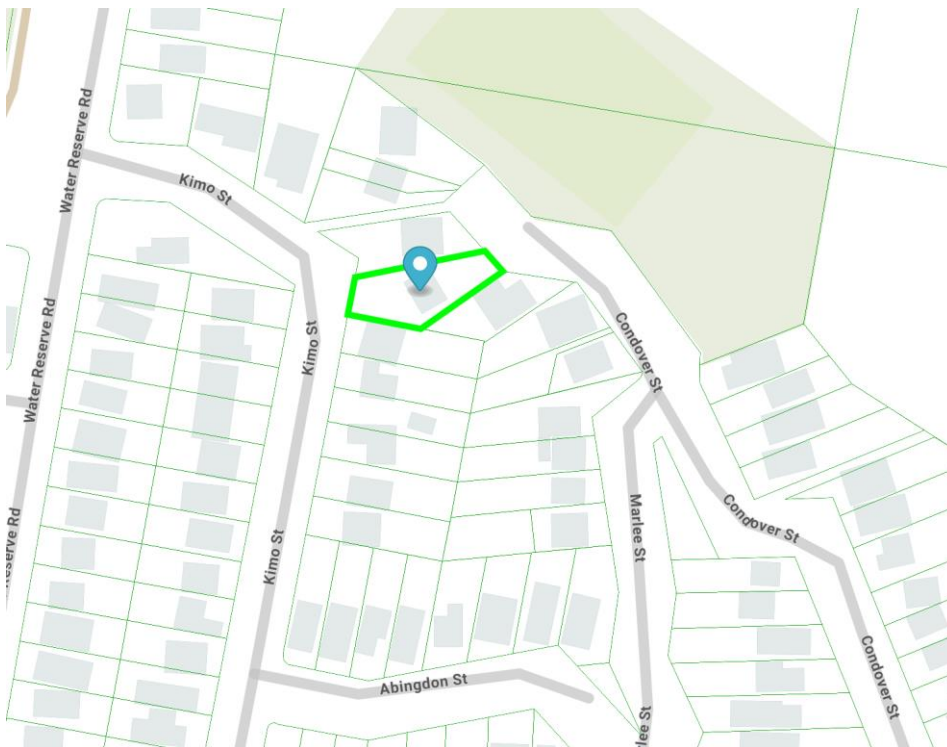


Figure 4 – allotment and dwelling footprint pattern within the local area (courtesy Mecone Maps)



Figure 5 – wider context, allotment patten, and minimum allotment regime under the applicable planning controls (courtesy Mecone Maps)

3 Environmental Assessment

3.1 Section 4.15 of the Environmental Planning & Assessment Act, 1979

The following section of the report assesses the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15 of the Environmental Planning & Assessment Act, 1979 as amended.

Under the provisions of the Environmental Planning and Assessment Act 1979 (the Act), the key applicable planning considerations, relevant to the assessment of the application are:

- Warringah Local Environmental Plan 2011
- State Environmental Planning Policies – as relevant
- Warringah Development Control Plan

The application of the above plans and policies is discussed in the following section of this report.

The application has been assessed against the relevant heads of consideration under Section 4.15 of the Act; a summary of these matters are addressed within Section 7 of this report, and the town planning justifications are discussed below.

4 Section 4.15 (1)(i) the provisions of any environmental planning instrument

4.1 Warringah Local Environmental Plan 2011 – Zoning

The property is zoned R2 Low Density Residential under the Warringah Local Environmental Plan 2011 (LEP).

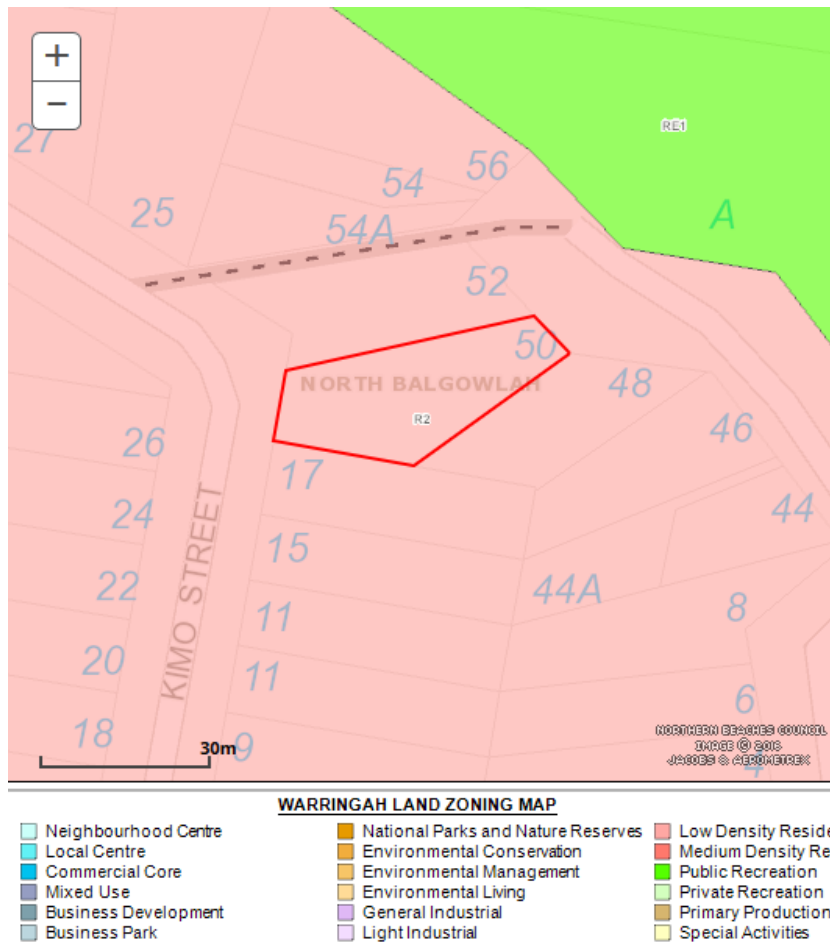


Figure 5 – zoning map excerpt (Northern Beaches Council)

The proposal constitutes demolition of the existing dwelling house and Community Title subdivision. The proposal is permitted within the zone with development consent as further addressed within section 4.2 below.

Clause 2.3(2) of the LEP requires the consent authority to ‘have regard to the objectives for development in a zone’ in relation to the proposal. The objectives of the zone are stated as follows:

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

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

To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah

It is assessed that the proposed development is consistent with the zone objectives, noting:

- it will provide for the housing needs of the community within a low density residential environment noting that councils' strategic planning policy establishes that there is strong and growing need for additional housing located within established urban areas.
- the resulting allotments are capable of being developed in a manner that is compatible with character of the low density residential environment and within a landscaped setting.
- the proposal will not lead to an excessive overdevelopment of the site, noting that compliant landscaped areas and building envelopes can be achieved.
- both resulting allotments are capable of being developed in a manner that is in harmony with the natural environment of Warringah.

Accordingly, the proposal has had sufficient regard to the zone objectives and there is no statutory impediment to the granting of consent.

4.2 Other relevant provisions of the LEP

Other provisions of the LEP that are relevant to the assessment of the proposal are noted and responded to as follows:

LEP Provision	Response	Complies
Part 1 Preliminary		
<p>LEP Clause 1.2 – Aims of the plan</p> <p>In relation to residential development:</p> <p><i>‘(d) in relation to residential development, to—</i></p> <p><i>(i) protect and enhance the residential use and amenity of existing residential environments, and</i></p> <p><i>(ii) promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and</i></p> <p><i>(iii) increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah,’</i></p>	<p>The proposed residential development of the site is assessed as satisfying the aims of the LEP for the reasons explained within this statement of environmental effects, the accompanying expert assessment reports and noting:</p> <ul style="list-style-type: none"> ▪ The allotment configuration and indicative development extent satisfies the relevant environmental considerations as confirmed by the accompanying expert reports. ▪ The proposed development outcome is assessed as being compatible with the local area context for the reasons provided within the report in response to the relevant assessment considerations. ▪ The proposal will increase the supply and quality of contemporary housing, in-line with population growth and housing demand 	Yes

LEP Provision	Response	Complies
	which is established as being strong within the Northern Beaches by the Local Strategic Planning Statement and the adopted Housing Strategy.	
Part 2 of LEP – Permitted or prohibited development		
LEP Clause 2.6 – Subdivision—consent requirements are applicable to the land and its proposed subdivision. It states: <i>(1) Land to which this Plan applies may be subdivided, but only with development consent.</i>	The proposed subdivision is permitted with development consent.	Yes
Part 4 of LEP – Principal Development Standards		
LEP Clause 4.1 Minimum subdivision lot size and 4.1AA Minimum subdivision lot size for community title schemes	Addressed separately below table.	NA
LEP Clause 4.3 – Height of Buildings	NA	NA
LEP Clause 4.4 – Floor space ratio	NA	NA
LEP Clause 4.6 – Exceptions to development standards	NA	NA
Part 5 of LEP – Miscellaneous Provisions		
LEP Clause 5.4 Controls relating to miscellaneous permissible uses	NA	NA
LEP Clause 5.10 Heritage Conservation	<p>The LEP does not identify the site as having heritage significance.</p> <p>In relation to potential archaeological heritage, reference is made to the previous DA2019/1122 and the accompanying assessment report dated January 2020, which states as follows:</p> <p>The Aboriginal Heritage Office provided comments the following comments on the 22 October 2019:</p> <p><i>"DA2019/1122 50 Condover Street NORTH BALGOWLAH Reference is made to the proposed development at the above area and Aboriginal heritage.</i></p> <p><i>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal</i></p>	Yes

LEP Provision	Response	Complies
	<p>sites.</p> <p><i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i></p> <p><i>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the Department of Planning, Industry and Environment (DPIE) and the Metropolitan Local Aboriginal Land Council should be contacted."</i></p>	
Part 6 of LEP – Additional Local Provisions		
LEP Clause 6.1 Acid sulfate soils	Minor excavation for footings is proposed below the existing site levels (being at approx. AHD RL 40) which is above AHD RL 5.00.	Yes
LEP Clause 6.2 Earthworks	<p>Modest excavation for site services (stormwater drainage) is proposed below the existing site levels for the proposed subdivision. The proposal is accompanied by a geotechnical assessment that concludes that the proposal is appropriate for the site.</p> <p>The siting and design of the proposed development has considered the matters within clause 6.2(3) of the LEP and results in appropriate outcomes against these criteria. Based on the above the proposed development satisfies clause 6.2 of the LEP.</p>	Yes
LEP Clause 6.3 Flood planning	Council's maps do not identify the site as being flood affected.	NA
LEP Clause 6.4 Development on sloping land	<p>The proposal is accompanied by a geotechnical assessment that concludes that the proposal is appropriate for the site.</p> <p>The siting and design of the proposed development has considered the matters within clause 6.4(3) of the LEP and results in appropriate outcomes against these criteria.</p> <p>Based on the above the proposed development satisfies the considerations within clause 6.4 and the site is suitable for the development proposed.</p>	Yes

4.2.1 LEP clause 4.1AA Minimum subdivision lot size for community title schemes

Clause 4.1 of the LEP sets minimum lot sizes.

Clause 4.1 (c) of the LEP states that the clause does not apply to 'any kind of subdivision under the Community Land Development Act 1989'.

LEP clause 4.1AA 'minimum subdivision lot size for community title schemes' establishes minimum lot sizes in certain circumstances for land within zones RU4, E3 and E4. The clause is repeated and responded to below:

'4.1AA Minimum subdivision lot size for community title schemes

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

(a) to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.

(2) This clause applies to a subdivision (being a subdivision that requires development consent) under the Community Land Development Act 1989 of land in any of the following zones—

(a) Zone RU4 Primary Production Small Lots,

(b) Zone E3 Environmental Management,

(c) Zone E4 Environmental Living,

but does not apply to a subdivision by the registration of a strata plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies (other than any lot comprising association property within the meaning of the Community Land Development Act 1989) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

(4) This clause applies despite clause 4.1'.

In response –

- Subdivision is permitted with development consent (cl 2.6 of the LEP).
- Community Title subdivision is a form of subdivision permitted with development consent.
- Cl4.1AA establishes a minimum lot size/area for land within the zones listed in (2) (a) to (c), being RU4, E3 and E4. It does not set a minimum lot size for land within the R2 zone and therefore it does not establish a minimum subdivision lot size for a community title scheme on the subject site.
- In the absence of a minimum lot size standard to the proposed Community Title subdivision, it is not subject to clause 4.6 of the LEP.

The proposed subdivision is capable of satisfying the requirements under the *Community Land Development Act 1989*. To demonstrate such, the proposal is accompanied and supported by a draft community title plan prepared by Holding Redlich lawyers.

4.2.2 LEP Clause 4.1 Minimum subdivision lot size

Despite Clause 4.1(c) of the LEP establishing that clause 4.1 does not apply to 'any kind of subdivision under the Community Land Development Act 1989' guidance has been

taken from the objectives of Clause 4.1. The objectives of the development standard are repeated and responded to below:

Objectives	Response
<i>(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,</i>	<p>It is assessed that the proposed subdivision will protect the established residential character in the following ways:</p> <p>The property benefits from two street access points, north facing aspect, and topography that will facilitate a subdivision configuration, landscape pattern and built form outcome that is compatible with development in the local area.</p> <p>The conceptual dwelling house plans demonstrate that the proposed allotments are capable of satisfying the key built form controls applicable to the land in a manner that preserves the amenity of the surrounding properties.</p> <p>The irregular configuration of the proposed lots are similar to, and compatible with, allotments along the eastern side and Kimo St and west side of Condoval St where the topography is undulating and sloping.</p> <p>The proposed allotments maintain a landscape setting and minimise the extent of hard surface area in the form of driveways and manoeuvring areas for vehicles by having two street frontages with direct vehicle access from adjoining roadway.</p> <p>The size of the proposed lots are compatible with those in the locality noting that approx. 21.5% range from 400-500m² in area (addressed further below); some are battle-axe; most have their own street frontage.</p> <p>In the circumstance it is assessed that the proposed subdivision will not defeat the objectives of the zone or minimum allotment size standard. Nor will it give rise to any adverse streetscape or residential amenity consequences.</p>
<i>(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,</i>	Not applicable to the proposal.
<i>(c) to protect the integrity of land holding patterns in rural localities against fragmentation,</i>	Not applicable to the proposal.
<i>(d) to achieve low intensity of land use in localities of environmental significance,</i>	<p>The site is zoned low density residential and is not known or identified as being environmentally significant.</p> <p>The site's environmental qualities have been appropriately identified and investigated. The</p>

Objectives	Response
	<p>accompanying assessment reports confirm that the sites environmental qualities not impediments and the site can be developed in the manner proposed.</p> <p>The proposed development outcome for 2 allotments will provide (and maintain) a low intensity land use for 2 future dwelling houses that can comply with the built form controls on the property.</p>
<i>(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,</i>	The property is located within a buffer zone and can comply with bushfire planning provisions as confirmed by the accompanying bushfire assessment report.
<i>(f) to protect and enhance existing remnant bushland,</i>	<p>The site does not contain remanent bushland.</p> <p>The proposed subdivision may provide an opportunity to extend the landscape corridor that exists within properties to the south of the site and connect with large areas of bushland to the north of the site.</p>
<i>(g) to retain and protect existing significant natural landscape features,</i>	<p>The land's notable environmental characteristics include: its slope, bushfire exposure, existing vegetation (a significant sized Port Jackson Fig tree at the rear), and rock outcrops.</p> <p>These matters have been appropriately investigated, as documented within the accompanying assessment reports and plans (geotechnical, bushfire, stormwater, arboriculture) and within this Statement of Environmental Effects.</p> <p>The analysis confirms that the site is capable of accommodating the subdivision configuration proposed and future dwelling houses on each of the resulting allotments.</p> <ul style="list-style-type: none"> ▪ The proposal does not involve the removal of any designated trees, <p>Based on the information accompanying this DA, the proposal does not give rise to any unacceptable ecological, scientific, or aesthetic impacts.</p>
<i>(h) to manage biodiversity,</i>	The site is not known to accommodate any significant or threatened biodiversity qualities.
<i>(i) to provide for appropriate stormwater management and sewer infrastructure.</i>	<p>The property is capable of appropriate stormwater management through connection to councils street drainage system within Condoover St.</p> <p>An inter-allotment drainage easement is proposed to facilitate this outcome.</p>
Based on the above, as reasonably applied change the subject property, it is assessed that the	

Objectives	Response
objectives of the development standard can be satisfied.	

4.2.3 Prevailing allotment size and distribution

An assessment of the prevailing allotment size and distribution within the local context (suburb level) has been made by McGregor Coxall.

It establishes that the proposed allotment outcome would be consistent with 21.5% of lot sizes within the suburb, which are between 401-500m², the third highest allotment size category, comprising 250 lots in total (the highest category being 501 to 600 m² making up 323 lots (27.7%) and the second highest category being 601 to 700 m² making up 265 lots (22.7%)).

It is noted that there are high proportion of allotments within the local context of the site (Figure 6 and Figure 7 in Annexure 1) that comprise lot sizes between 401-500m² compatible with the size of the proposed allotment outcome.

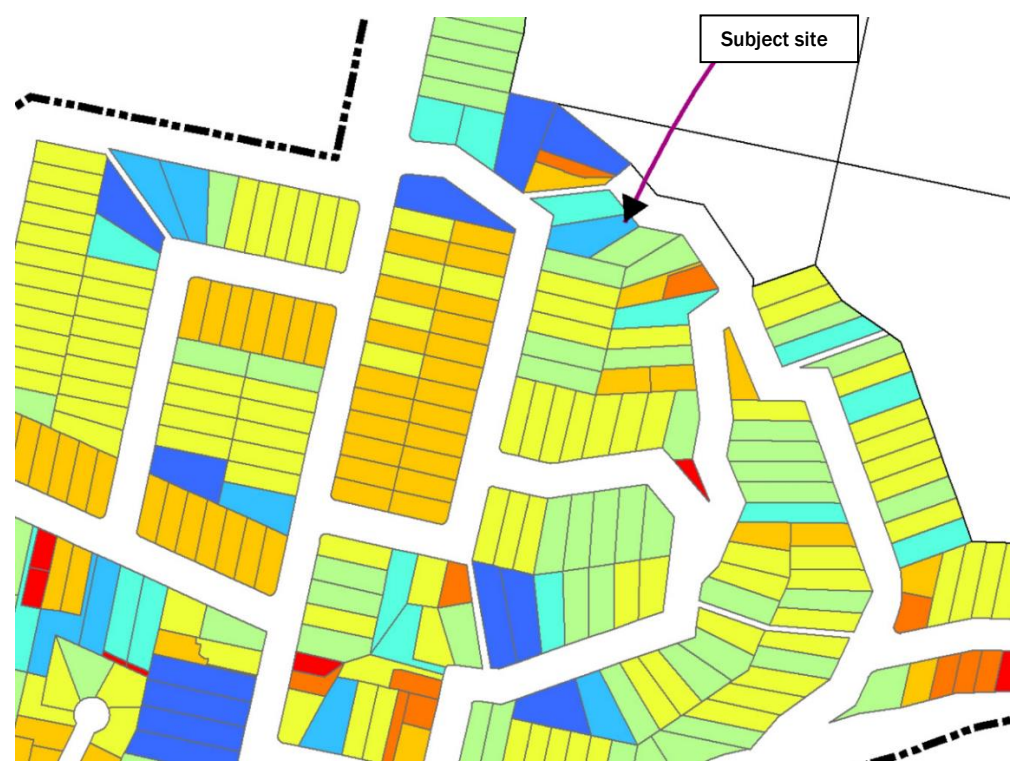


Figure 6 - Lots coloured orange (400-500m²) and yellow (500-600m²) within the local area of subject site have an area <600m² as per the key below (source: McGregor Coxall)

Suburb	Category (m2)	Number of lots	Percentage
North Balgowlah	0-300	28	2.40%
	301-400	59	5.06%
	401-500	250	21.46%
	501-600	323	27.73%
	601-700	265	22.75%
	701-800	86	7.38%
	801-900	67	5.75%
	901-1300	62	5.32%
Total		1165	

4.3 State Environmental Planning Policy

4.3.1 State Environmental Planning Policy - BASIX

Development consent is not sought for new dwelling houses, and therefore the proposed development is not BASIX affected development as prescribed. A BASIX assessment report is not needed to accompany the application in terms of the DA assessment.

4.3.2 SEPP (Vegetation in Non-Rural Areas) 2017

Vegetation is prescribed under Part E1 of DCP for the purposes of SEPP (Vegetation in Non-Rural Areas) 2017. An assessment has been made of the trees located on the subject site and adjoining land that are within proximity to the proposed development. An assessment report accompanies the development application assessing the impact of the proposal on vegetation on the site and on neighbouring land. The report notes:

‘Five (5) trees have been assessed for the purpose of this report. Of the five trees two (2) trees are located within adjacent Council verges, one (1) tree is located within a neighbouring property, one (1) tree is located partly on the boundary and one (1) tree within the site is identified as a nonprescribed (exempt) tree being less than 5m in height.

Council verge trees: are identified as Brush Box trees T1 & Grey Gum T5. The trees display no significant visual faults and are viable for retention. Neighbouring trees: T2 (Angophora) displays no significant visual faults with T4 (Port Jackson Fig) located partly on the boundary. T4 has been subjected to canopy reduction works with both trees being capable of retention displaying with no significant defects that would warrant tree removal.

Exempt non-prescribed species: is identified as T3 (Marraya) being under 5m in height. Being an exempt non-prescribed tree T3 is permitted to be managed (pruned, removed or relocated) without Council consent. Should the tree require retention further advice and protection methodology is required prior to works occurring within Tree Protection Zone (TPZ) setbacks’.

In summary, there is one tree within the development site, tree ‘T4’ being a Port Jackson Fig, which is located near the south western boundary. It will not be impacted by the

proposed subdivision and is capable of being retained in association with a future dwelling house development upon proposed lot 1.

Significant established trees are located within the properties Kimo Street frontage and will be retained by the proposal. Therefore, no significant trees are proposed to be removed by the proposed development.

The project arborist makes recommendations to mitigate and manage trees during development. such recommendations may reasonably be included in the conditions of this development consent. based on the above the proposal is assessed as satisfying the policy.

4.3.3 State Environmental Planning Policy No 55 – Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land.

Clause 7 of SEPP 55 requires Council to consider whether land is contaminated prior to granting consent to carrying out of any development on that land. In this regard, the likelihood of encountering contaminated soils on the subject site is extremely low given the following:

- Council's records indicate that site has only been used for residential uses.
- The subject site and surrounding land are not currently zoned to allow for any uses or activities listed in Table 1 of the contaminated land planning guidelines of SEPP 55.
- The subject site does not constitute land declared to be an investigation area by a declaration of force under Division 2 of Part 3 of the Contaminated Land Management Act 1997.

Given the above factors no further investigation of land contamination is warranted. The site is suitable in its present state for the proposed residential development. Therefore, pursuant to the provisions of SEPP 55, Council can consent to the carrying out of development on the land.

4.4 Bushfire Prone Land - Rural Fires Act 1997

The site is within a bushfire prone area and subject to the provisions of the Rural Fires Act 1997. As a result, the proposal is accompanied and supported by a bushfire protection assessment report. Subject to compliance with the report's recommendations, the proposal satisfies planning for bushfire protection requirements.

5 Development Control Plan

5.1 Overview

In response to Section 4.15(1)(iii) of the Act, the Warringah Development Control Plan (DCP) is applicable to the property. Relevant provisions of the Warringah DCP are addressed below.

5.1.1 C1 Subdivision

The objectives of the control Part C1 Subdivision is applicable to the assessment of the proposal, controls are identified as follows:

To regulate the density of development.

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

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.

To maximise and protect solar access for each dwelling.

To maximise the use of existing infrastructure.

To protect the amenity of adjoining properties.

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

Requirements

Part C1 of the DCP contains the following dimensions for proposed new allotments:

Minimum width: 13 metres

Minimum depth: 27 metres; and

Minimum building area: 150m²

The proposed allotments are assessed below against the provisions of the DCP:

Proposed Lot 1 - accessed from Kimo St			
	Required	Proposed	Complies?
Lot area LEP CI 4.1 AA	NA to community title within R2 zone	438 m ²	Yes
Lot width	13m	Variable – 13.7m (at street frontage) to approx. 22m at widest point near proposed rear boundary	Yes
Lot depth	27m	Variable – 21.3m north side	No* Modest variation at

Proposed Lot 1 - accessed from Kimo St			
		28m approx. south side 24.1m approx. centre of proposed lot	northern boundary, addressed below.
1(c) Indicative building area	150 m ²	Dwelling: 137.8 m ²	Yes

Proposed Lot 2 – accessed from Condoever St			
	Required	Proposed	Complies?
Lot area	NA to community title within R2 zone	410 m ² *	Yes
Lot width	13m	Variable – 8.32m (at street frontage) 11.5 at the 6.5m front building line 18.2m approx. at the 6m rear building line 20.8m approx. at rear boundary	Modest variation at street boundary, which is an existing condition of the site resulting from the site's cul-de-sac location.
Lot depth	27m	Variable – 25.9m north side (27.3 at the 2m building line) 28.8m at approx. centre of proposed lot 33.4m approx. south side	No* Modest variation at northern boundary, addressed below.
1(c) Indicative building area	150 m ²	Dwelling: 112 m ²	Yes
*the area is inclusive of the inter-allotment drainage easement (Lot 3 – 1m wide, 23.8m in length). This is part of the effective area of 2 lot. It will form part of the north side set back and landscaped area associated with lot 2. It will contribute the spatial separation, landscaped setting, and function of proposed lot 2. It does not provide vehicle access functions. There would be no planning basis to exclude this area from the calculation of Lot two's effective area for the purposes of the planning assessment.			

5.1.2 Allotment depths – proposed exception

Both proposed lots satisfy the width requirement of 13 metres displaying widths significantly more than the minimum dimensions. The site's Condoever Street frontage of 8.32m is an exception, which is an existing circumstance that is established as part of the cul-de-sac location and functional as the existing vehicle access point.

A variation is sought to the minimum depth requirement of 27 metres for each proposed Lot, which have variable depths as detailed within the tables above. The variation is acknowledged, and justification is provided below having regard to the objectives of the control, the merits of the design and the circumstances of the property.

The two allotments proposed, each with their own street frontage; are in keeping with the established residential allotment character of the location and avoid a less desirable battle-axe configuration.

Further in support to the above variation and response to the planning control requirements:

The existing allotment is irregularly shaped and characterised by undulating topography. This characteristic is also reflected in the proposed subdivision configuration. The minimum allotment widths are exceeded, compensating for variable, reduced lot depths.

The plan of subdivision includes indicative future building envelopes in accordance with the principles established in Parrott V Kiama Council.

The accompanying indicative dwelling house plans demonstrate that a minimum buildable area is achieved by the proposed allotments, and that:

- The setback controls for the front, rear and side boundaries can be met.
- An appropriate building envelope for a dwelling house can be established and accommodate the reasonable needs and expectations of future occupants / land owners, without inappropriate impacts on neighbouring properties.
- Appropriate solar access outcomes can be achieved for the future dwellings on the subject side as well as minimising shadowing onto adjoining properties. Furthermore, appropriate privacy and view sharing outcomes can also be achieved. These matters further addressed response to the DCP controls within the relevant sections below.
- The allotments resulting from the proposed subdivision are each capable of complying with the various residential dwelling controls of the DCP and preserving an appropriate amenity to adjoining properties.

Each proposed allotment can be accessed from the adjoining roadways which are formed, kerbed and guttered streets. The grade of the street and the proposed lots do not provide constraints to access.

Each allotment can be serviced by key utilities like electricity, water, sewer; the detailed locations of these being subject to service authority endorsement / certification.

Compliant stormwater management is achieved as detailed elsewhere within this report.

Conclusion

Based on the above, it is concluded that the proposed variations are modest and contextually reasonable, satisfying the objectives of the planning controls.

Under clause (3A)(b) of Section 4.15 of the Act, it is appropriate for the consent authority to be flexible in applying the controls where the objectives of those controls have been satisfied. Accordingly, it is assessed that these aspects of the proposal are worthy of support, in the particular circumstances.

5.2 Key built form controls - indicative dwelling house designs

As previously noted within Section 1.1 of this report, the DA is accompanied and supported by conceptual plans for dwelling houses on each of the proposed lots.

The purpose of these plans is to demonstrate that the proposed subdivision can accommodate future dwelling houses. Development consent is not sought for these dwelling house designs as part of the subject development application.

The indicative dwelling house designs are profiled in the tables below.

5.2.1 Indicative building envelope proposed Lot 1 (438.8m²) – accessed from Kimo St

Gross Floor Area (GFA): 209.3 and FSR: 0.48 to 1. Whilst not an LEP or DCP controls, this is relevant to the considerations of building made within section 5.2.5 of this report below.

Clause	Requirement	Proposed	Complies?
B1 Wall Height	7.2m	Complies - as shown on the architectural plans	Yes
B3 Side Boundary Envelope	4m at 45 degrees Based on the side setbacks the following eave heights apply: North side: 7m South side: 4.9 to 8m	Complies - as shown on the architectural plans	Yes
B5 Side Setback	900mm	North side 3m South side: 900mm to garage 1.0m to 4.0m to dwelling house	Yes
B7 Front Setback	6.5m	6.5m	Yes
B9 Rear Setback	6m	6m	Yes

Clause	Requirement	Proposed	Complies?
D1 Landscaped Open Space	40% - 175 m ²	61% / 268 m ²	Yes
Private open space	60 m ²	>60 m ² At rear of the dwelling adjacent to living room and kitchen	Yes

5.2.2 Indicative building envelope proposed Lot 2 – accessed from Condoever St

Gross Floor Area (GFA): 168, FSR: 0.41 to 1. Whilst not an LEP or DCP controls, this is relevant to the considerations of building bulk made within section 5.2.5 of this report below.

Clause	Requirement	Proposed	Complies?
B1 Wall Height	7.2m	Complies - as shown on the architectural plans	Yes
B3 Side Boundary Envelope	4m at 45 degrees. Based on the side setbacks the following eave heights apply: North side: 4.950m, 6.6m to 10m South side: 6.6m	Complies - as shown on the architectural plans	Yes
B5 Side Setback	900mm	North side: 950mm, 2.6m to 6mm South side 2.6m	Yes
B7 Front Setback	6.5m	6.5m	Yes
B9 Rear Setback	6m	6m	Yes

Clause	Requirement	Proposed	Complies?
D1 Landscaped Open Space	40% - 164 m ²	63.1% / 244 m ² (excluding Lot 3) 65% / 268 m ² (including Lot 3)	Yes
Private open space	60 m ²	Approx. 70 m ²	Yes

5.2.3 Conclusion - indicative dwelling house designs

The indicative dwelling house designs appropriately respond the DCP's built form controls and assist the assessment of the proposed subdivision.

The allotments resulting from the proposed subdivision are each entirely capable of complying with the various built form controls of the DCP. The indicative dwelling designs demonstrate that such a development outcome

- would be compatible with character of the low-density residential environment and within a landscaped setting.
- would not lead to an excessive overdevelopment of the site noting that compliment landscaped areas and building envelopes can be achieved.

5.2.4 DCP compliance assessment – Parts C and D

Clause	Compliance with Requirement	Consistent with aims and objectives
Part C - Siting Factors		
C1 Subdivision	Previously addressed	Previously addressed
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities 2 car parking spaces are provided for each proposed allotment in compliance with contemporary standards (despite the current arrangement benefiting from previous approvals)	Yes	Yes
C4 Stormwater The DA is accompanied and supported by stormwater management plans prepared by Stellen Consulting engineers and demonstrate compliance with the control. Each lot is proposed to drain to Condoover St via gravity means; For proposed lot 1 (fronting Kimo Street) this is via a proposed inter-allotment easement the proposed community lot (Lot 3).	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to constructed Council drainage easements	Yes	Yes
C7 Excavation and landfill The proposed subdivision does not involve significant excavation or landfill. The indicative dwelling house designs would result in different degrees of excavation. The extent of excavation is capable of satisfying the provisions of the control. The objectives are relevant to this stage of the site's proposed development and are repeated and responded to below: <i>Objectives</i> <ul style="list-style-type: none"> ▪ To ensure any land excavation or fill work will not have an adverse effect upon the visual and natural environment or adjoining and adjacent properties. ▪ To require that excavation and landfill does not create airborne pollution. ▪ To preserve the integrity of the physical 	Yes	Yes

Clause	Compliance with Requirement	Consistent with aims and objectives
<p>environment.</p> <ul style="list-style-type: none"> To maintain and enhance visual and scenic quality. <p>Response</p> <ul style="list-style-type: none"> The indicative dwelling house designs demonstrate that both dwellings would have characteristic, bulk, scale and form, relevant to the dwelling house character within the local area. Each would be viewed from adjoining land as being positioned within a landscaped setting. They would have an appropriate effect upon the visual environment, Presenting modest scale homes to the adjacent streets. The accompanying assessment reports demonstrate that the indicative dwelling house designs would have an appropriate effect upon the natural environment. The indicative dwelling house designs demonstrate that both dwellings would have an appropriate relationship with the pattern of adjoining dwellings and provide appropriate amenity outcomes to the adjoining properties as detailed elsewhere within this report. 		
<p>C8 Demolition and Construction</p> <p>The site is able to satisfy the demolition and waste minimisation objectives of the DCP, noting:</p> <ul style="list-style-type: none"> Demolition will be managed to ensure air and water borne pollutants such as noise, dust, odour, liquids and the like are minimised. Demolition will be managed to minimise site disturbance to the surrounding area. Additional specific details can be provided at Construction Certificate stage when contractors are engaged to undertake the work. 	Yes	Yes
C9 Waste Management	Yes	Yes
Part D - Design		
<p>D1 Landscaped open space and bushland setting</p> <p>Previously addressed.</p>	Yes	Yes
<p>D2 Private Open Space</p> <p>Required: 3 bedroom dwellings - a total of 60m² with minimum dimensions of 5 metres</p> <p>Response:</p>	Yes	Yes

Clause	Compliance with Requirement	Consistent with aims and objectives
The conceptual dwellings assume three or more bedrooms and would be required to have 60m ² of Private Open Space. Each indicative dwelling meets and exceeds the minimum 60 m ² requirement through landscaped areas at ground level and would not rely on elevated terraces to satisfy the control. Each private open space is directly accessible from the living area.		
D3 Noise	Yes	Yes
D4 Electromagnetic radiation	Yes	Yes
D5 Orientation and energy efficiency	Yes	Yes
<p>D6 Access to sunlight</p> <p>Shadow diagrams showing the existing and proposed shadows of the indicative dwelling house designs accompany the proposal. They demonstrate that compliance with the DCP is achieved. The following key aspects are noted.</p> <p>The site and the adjoining properties have a north east / south west orientation. As a result, shadow diagrams demonstrate that shade will be minimised by the slope and relatively evenly shared between the front yard (morning) of 17 Kimo Street and rear yard (afternoon) of the adjacent property at 48 Conover St. This provides a relatively even distribution of shade, consistent with the local development pattern.</p> <p>The DCP requires:</p> <p><i>'1. Development should avoid unreasonable overshadowing any public open space.</i></p> <p><i>2. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21'.</i></p> <p>In accordance with Clause D6 of the DCP, the sunlight available to the private open space of adjoining the dwelling houses will not be impacted by more than 3 hours between 9am and 3pm on 22 June.</p> <p>It is assessed that, whilst shade onto the adjoining property be moderately increased above the current levels, the extent of the increase is within reasonable limits, and satisfies the DCP. Therefore, it is concluded that the provisions of the control are satisfied.</p>	Yes	Yes

Clause	Compliance with Requirement	Consistent with aims and objectives
<p>D7 Views –</p> <p>New development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.</p> <p>Given the sloping topography, the siting of the indicative dwelling house designs, and the compatibility of the proposed built form with that of the adjoining and nearby development, the proposal is not anticipated to significantly or unreasonably impede established views from surrounding residential properties or any public vantage points and satisfies the control. For these reasons it is concluded the development satisfies the reasonable interpretation of the principles established by the Land and Environment Court of NSW in the matter of <i>Tenacity consulting v Warringah</i> [2004] NSWLEC 140.</p>	Yes	Yes
<p>D8 Privacy –</p> <p>Privacy has been considered in the design of the indicative dwellings and each satisfies the DCP's objectives. The following aspects of the proposal are noted:</p> <ul style="list-style-type: none"> ▪ Appropriate side building setbacks are provided noting the significant setbacks proposed where the site is on similar (or higher) levels to the adjacent land, with lesser side setbacks where it design is excavated. ▪ No upper floor balconies or terraces are relied upon to achieve the minimum private open space requirements. ▪ No large upper floor balconies or terraces of a size that would allow for the congregation of people are adjacent to sensitive living areas within the neighbouring properties. ▪ Side boundary facing window openings are limited and appropriate in terms of their function (the rooms that they serve), location, sill height, and extent. <p>It is concluded that the indicative dwelling designs would provide inappropriate visual privacy outcome to the neighbouring properties.</p>	Yes	Yes
D9 Building Bulk - addressed separately below the table	Yes	Yes
D10 Building Colours and Materials	NA	NA

Clause	Compliance with Requirement	Consistent with aims and objectives
Not relevant to this stage of the site's proposed development.		
D11 Roofs	Yes	Yes
D12 Glare and Reflection	NA	NA
D13 Front fences and front walls	Yes	Yes
D14 Site facilities	Yes	Yes
D15 Side and rear fences	Yes	Yes
D16 Swimming Pools and Spa Pools	NA	NA
D17 Tennis courts	NA	NA
D18 Accessibility	Yes	Yes
D19 Site consolidation in the R3 and IN1 zone	NA	NA
D20 Safety and security	Yes	Yes
D21 Provision and location of utility services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes

5.2.5 D9 Building Bulk

Control D9 seeks to ensure that built form outcomes relate appropriately to the slope and configuration of the land and achieve a compatible building form and size when viewed from adjoining land.

Assessment of building bulk can be a subjective assessment consideration. With the aim of reducing such subjectivity consideration has been made in the assessment of the proposed indicative building envelopes of the planning principle titled *relationship of density and residential character* Salanitro-Chafei v Ashfield Council [2005] NSWLEC 366 at 23-28. In making this consideration the GFA and FSR of the indicative dwelling house designs is noted as follows:

- Lot 1 - Gross Floor Area (GFA): 209.3 m² and FSR: 0.48 to 1.
- Lot 2 - Gross Floor Area (GFA): 168m² and FSR: 0.41 to 1

Whilst FSR is not a development standard under the LEP, it is a quantifiable measure of bulk and scale and a means to quantify the development extent on the site.

The planning principle is repeated and responded to below.

Planning principle: relationship of density and residential character

'23 The Ashfield planning controls are not unusual in that they do not contain a maximum FSR for dwelling houses; very few planning instruments control the density of detached housing. The question arises: is there an upper level of density above which it is hard to achieve compatibility with the character of typical single-dwelling areas?

24 As early as 1972 a publication of the then State Planning Authority of NSW described the FSR of low-density residential areas as under 0.35:1; the FSR of low medium density areas as between 0.35:1 to 0.55:1; and the FSR of medium density areas as between 0.55:1 and 0.9:1 (Technical Bulletin 3 - Planning Control of Residential Development November 1972).

25 A later publication by the Authority's successor, the Department of Environment and Planning (Technical Bulletin 15 - Residential Development Standards, July 1982) suggested that

"...a control over building bulk in the form of a floor space ratio of the order of 0.5:1 should be included in planning instruments where a suburban open character is sought." (p 16).

26 The standard of 0.5:1 FSR has found expression in numerous planning instruments and policies whose aim is to integrate increased density housing into low-density residential areas without destroying the existing open character. The Seniors Living State Environmental Planning Policy adopts a FSR of 0.5:1 as a "deemed to comply" standard. State Environmental Planning Policy 53 - Metropolitan Residential Development adopts it as the maximum permissible density in relation to dual occupancy. Many local planning instruments and policies guiding dual occupancy development in suburban areas also contain a maximum FSR control of 0.5:1.

27 The above suggests that there is a general acceptance by the planning profession that an open suburban character is most easily maintained when the FSR of buildings does not exceed 0.5:1. The question raised above may therefore be answered thus:

The upper level of density that is compatible with the character of typical single-dwelling areas is around 0.5:1. Higher densities tend to produce urban rather than suburban character. This is not to say that a building with a higher FSR than 0.5:1 is necessarily inappropriate in a suburban area; only that once 0.5:1 is exceeded, it requires high levels of design skill to make a building fit into its surroundings.

28 The proposed building has a FSR significantly in excess of 0.5:1. It does not exhibit any special design skills. This is one of the explanations why it appears so incongruous in its surroundings'.

Response

It is observed that an 'open suburban character' is desired by the R2 zone and the applicable planning controls as evidenced by:

- Only dwelling houses and secondary dwellings being permitted housing forms in the zone, it is not uncommon in NSW metropolitan LEPs for the R2 zone to allow other housing forms like dual occupancy and semi-detached dwellings.

- The third zone objective stating – *‘To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah’*.
- DCP control D1 requires 40% of the site to be landscaped area with a minimum dimension of two metres.

In assessing the proposed development against the planning principle, it is concluded that:

- The indicative dwelling designs achieve a high level of compliance with the dwelling house, built form controls. Furthermore, they provide a floor space ratio of 0.48 to 1 and 0.41 to 1 respectively in relation to proposed lots 1 and 2, being 0.45 to 1 in the aggregate; not exceeding 0.5 to 1, which is deemed to be characteristic of a low density residential setting.
- The indicative dwelling designs provide a characteristic built form that is commonly seen on sloping sites within the Northern Beaches Local Government Area. Such designs are characteristic of contemporary dwelling house designs and the built form within the local area where there is undulating topography.
- The proposed allotments maintain a landscape setting providing compliant landscaped areas that exceed the minimum of 40%. Furthermore, the proposed allotments minimise the extent of hard surface area in the form of driveways and vehicle manoeuvring areas by having two street frontages with direct vehicle access from the adjoining roadways.

Based on the above characteristics, and in response to the planning principle, the proposal does not provide an excessive or uncharacteristic building bulk and the indicative dwelling house designs demonstrate that control D9 Building Bulk can be satisfied.

5.2.6 DCP compliance assessment – Part E

Clause	Compliance with Requirement	Consistent with aims and objectives
Part E - The Natural Environment		
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	NA	NA
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	NA	NA
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
<p>E6 Retaining unique environmental features</p> <p>The provisions of the control are rotated and responded to below.</p> <p><i>Objectives</i></p> <p><i>To conserve those parts of land which distinguish it from its surroundings.</i></p> <p><i>Requirements</i></p> <ol style="list-style-type: none"> <i>1. Development is to be designed to address any distinctive environmental features of the site and on adjoining nearby land.</i> <i>2. Development should respond to these features through location of structures, outlook, design and materials.</i> <p><i>Response</i></p> <ul style="list-style-type: none"> ▪ Distinctive environmental features of the site include its sloping topography, which include rock shelf and rock outcrops within the rear, middle and front sections of the allotment. ▪ The indicative dwelling designs demonstrate that the property can accommodate terraced building design in the locations shown. ▪ The previous assessment by the aboriginal heritage office in relation to DA2019/1122 found that the site was unlikely to have aboriginal heritage significance in relation to the rock outcrops up on the property. ▪ The rock outcrops at the rear of the site are visually obscured from Kimo Street and principally visible from within the subject site and the northern adjoining neighbour at 50 Condoever St. A future dwelling within proposed Lot 1 would result in modification of these rock features. ▪ The rock outcrops at the front of the site are visible from Condoever St; the subject DA does not propose 	Yes	Yes

<p>any impact on these features. The rock outcrops within the middle of the site would not be significantly impacted by the proposed subdivision or future dwelling houses.</p> <p>Based on the above appropriate assessment has been made of the site's natural rock features, and the proposal satisfies this assessment consideration.</p>		
E7 Development on land adjoining public open space	NA	NA
E8 Waterways and Riparian Lands	Yes	Yes
E9 Coastline Hazard	NA	NA
<p>E10 Landslip Risk – report accompanying</p> <p>The proposal is accompanied and supported by technical assessments pie geotechnical and civil engineers. the information confirms that the proposed development is on land that is geotechnically stable end capable of satisfying stormwater management requirements.</p>	Yes	Yes
E11 Flood Prone Land	NA	NA

5.3 Planning principles

5.3.1 ***Planning principle for Subdivision - When a residential subdivision application should impose constraints on future development***

Consideration has been given to the planning principle relating to ‘when a residential subdivision application should impose constraints on future development’ established in the matter of Parrott v Kiama [2004] NSWLEC 77. The planning principle is repeated and responded to below:

17 When should a subdivision application include information on the buildings to be built on the resulting allotment(s)? It is normal practice in Australia to subdivide land without constraints on the buildings that can later be built. While this practice is appropriate in most cases, it is not always so. I have adopted the planning principle that a subdivision application should provide constraints on future buildings when the proposed allotments are smaller than usual, or environmentally sensitive or where significant impacts on neighbours is likely and needs careful design to minimise them.

18 In this case the proposed battleaxe allotment is not small, though it is much smaller than its neighbours. It is environmentally sensitive because of its extreme steepness. It is in a location where the adjoining allotments all have rear yards and thus it breaks the established building line. Any future building on it will be closer to the Stafford Street properties than other houses are to their southern neighbours. The likelihood of adverse impact is high. This is not to say that an acceptable dwelling cannot be designed on the allotment, only that it would require a higher than usual level of design skill. The design of the future house (at least the outline design) is not a matter that is appropriately left till later.

In response –

This principle is applicable to the assessment of the proposal, as identified by Council at the Pre-DA meeting. The following responds to the three key tests within the principle.

‘when proposed allotments are smaller than usual’

Whilst the proposed allotments are less than 600 square metres, and therefore smaller than the minimum lot size under clause 4.1, they are similar to 21.5% of lot sizes within the suburb which have a lot size between 400 and 500 square metres (Figures 6 and 7).

Furthermore, the DA demonstrates that the proposed allotments are large enough to accommodate detached dwelling houses as demonstrated by the indicative dwelling designs that accompany the DA.

‘when proposed allotments are environmentally sensitive’

- The land’s notable environmental characteristics include: its slope, bushfire exposure, existing vegetation (a significant sized Port Jackson Fig tree at the rear), and rock outcrops.
- These matters have been appropriately investigated as documented within the accompanying assessment reports and plans (geotechnical, bushfire, stormwater,

arboriculture) and within this Statement of Environmental Effects. The analysis confirms that the site is capable of accommodating the nature and extent of the proposed development.

- The proposal does not involve the removal of any designated trees.
- Section C1(6) of the DCP relates to environmentally constrained land and states:

6. 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.

In response, the land is not subject to *flooding, tidal inundation, threatened species*. The indicative dwelling house designs demonstrate that adequate building areas/footprints can be established on each of the proposed developments and achieve a development outcome that satisfies the planning controls.

- *'Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops'.*

The position of the dividing boundary between the proposed Lots accounts for a change in level on the land. The change in level physically delineates a separation between the proposed allotments. This will facilitate appropriate privacy and solar access outcomes between future dwelling houses within proposed lots.

- Section C1(7) of the DCP relates to bushfire and states: *'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'*

Bushfire is assessed as satisfactory by the company assessment report and no asset protection zones are proposed outside of the property satisfying the control

'where significant impacts on neighbours is likely and needs careful design to minimise them'.

The indicative dwelling house designs are terraced and excavated into the topography of the land such that they would integrate with the slope, rather than projecting (being elevated) above it.

In relation to privacy:

There is a change in levels between proposed Lot 1 and the adjoining properties. Proposed Lot 1 is adjacent to 17 Kimo St (south west) which is significantly elevated above the site. Proposed Lot 2 is adjacent to 48 Condoover Street (south east), and 52 Condoover Street (north west) is at similar levels and occupies a similar position to the existing dwelling house, albeit set further forward (to the east)

The change in levels between proposed Lot 1 and the adjacent properties facilitates the maintenance of privacy and avoids direct overlooking between private areas in living spaces. Furthermore, future dwelling houses are capable of achieving significant side setbacks and appropriate orientation to achieve inappropriate privacy outcomes. Privacy is further addressed with section 5.2.3 of this report.

In relation to solar access:

The site and the adjoining properties have a north east / south west orientation. As a result, shadow diagrams demonstrate that shade will be minimised by the slope and relatively evenly shared between the front yard (morning) of 17 Kimo Street and rear yard (afternoon) of the adjacent property at 48 Condoover St. This and provides a relatively even

distribution of shade, consistent with the development pattern along the streets. Solar access is further addressed with section 5.2.3 of this report.

Further to the above, the potential for inappropriate impacts upon the amenity of neighbouring land is unlikely in the circumstances noting:

- Each proposed lot will have its own street frontage and follows the pattern of within each of the adjoining streets.
- Each proposed lot is capable providing compliant landscape area.
- Each proposed lot will be compatible with the allotment and dwelling house pattern and does not 'break' the building lines (front or rear) established within Condoval and Kimo Streets.

Controls for future buildings on the property

The indicative building envelope plans that accompany the DA demonstrate the conceptual development of a new dwelling house on each of the proposed allotments.

As profiled within section 5 of this report, the designs display a high level of compliance with the local built form planning controls (LEP and DCP). The plans demonstrate that each allotment can be developed in a manner that is anticipated by the local planning controls.

It is therefore assessed that, in the circumstances, the controls under the LEP and DCP impose sufficient and appropriate limitations on the future development of the land.

5.3.2 *Wallis & Moore Pty Limited v Sutherland Shire Council [2006] NSWLEC 713*

Planning principle

'74 In the interests of good passive solar design of future dwellings, residential subdivision should be designed to maximise the number of allotments with side boundaries oriented in a generally north-south direction. Regard must also be had for topography, views and special natural features of the land and weighed in the balance with passive solar design. This objective is encapsulated in the following planning principle:

In assessing applications for residential subdivisions the Court places major emphasis on the ease with which future dwellings with good solar access can be erected on the proposed allotments. In general, this condition is best fulfilled when the side boundaries of the majority of the allotments are on or near a north-south axis; however, there may be other solutions. What is important is to think of the subdivision beyond the subdivision stage and strive for a future residential area in which the great majority of dwellings can achieve good solar access'.

Response

The lot (configuration and slope) the existing and proposed allotments are orientated southwest to northeast.

As demonstrated by the indicative dwelling house designs the generous width of the allotments allow for generous northern side setbacks and private open spaces that will receive satisfactory solar access.

Future dwellings on the proposed lots can be terraced into the north facing slope and achieve excellent solar access.

These circumstances:

- minimise the potential for any significant shading impact on the adjoining neighbours to the south and west of the site.
- optimise solar access to the indicative dwelling house designs.

It is assessed that the proposal development satisfies the planning principle.

6 Section 4.15 the Environmental Planning and Assessment Act 1979 – Summary

The proposal has been assessed having regard to the matters for consideration pursuant to S.4.15 of the Act and to that extent Council can be satisfied of the following:

- There will be no significant or unreasonable adverse built environment impacts arising from the proposed physical works on the site.
- The site is appropriate for accommodating the proposed development. The proposal has sufficiently addressed environmental considerations. There will be no significant or unreasonable adverse environmental impacts arising from the proposal.
- The proposal will result in positive social and economic impacts, noting:
 - Employment during the construction phase of the works;
 - Economic benefits, arising from the investment in improvements to the land;
 - Social (and environmental) benefits arising from the renewal of existing housing stock and additional housing is an established high amenity residential location.
- The proposal is permissible and consistent with the objectives of the zone, pursuant to the LEP. The proposal satisfies the provisions of the relevant provisions of the council's DCP.
- It is compatible with the current and likely future character of development within the local context.
- It will not result in any significant unacceptable offsite impacts that limit the use or enjoyment of nearby or adjoining land.
- The proposal will have an acceptable impact when considering key amenity issues such as visual impact, views, overshadowing, noise and privacy.
- Given the site's location and established function, the site is assessed as being entirely suitable for the proposed development.
- The public interest is best served through the approval of the application.

7 Conclusion

The application seeks development consent to demolish the existing dwelling house and subdivide the land from 1 lot into 2 lots each with their own street frontage and separate vehicle access at 50 Condoover Street, North Balgowlah.

The proposal is an appropriate, logical, and orderly development of the property that is responsive to the prevailing planning objectives for the site.

The variation proposed to the DCP lot depth control has been appropriately acknowledged and its acceptability assessed and considered, having regard to the objectives of the control and the circumstances applicable to the site.

This report demonstrates that the proposal is appropriately located and configured to complement the area's established subdivision and dwelling house character. It is assessed that the land can accommodate the proposal without any unreasonable impacts on the existing development character or neighbouring amenity.

The proposal will not give rise to any significant or unreasonable adverse environmental consequences. The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 and should be granted development consent.

BBF Town Planners



Michael Haynes
Director

8 Annexure 1 - Prevailing allotment size and distribution

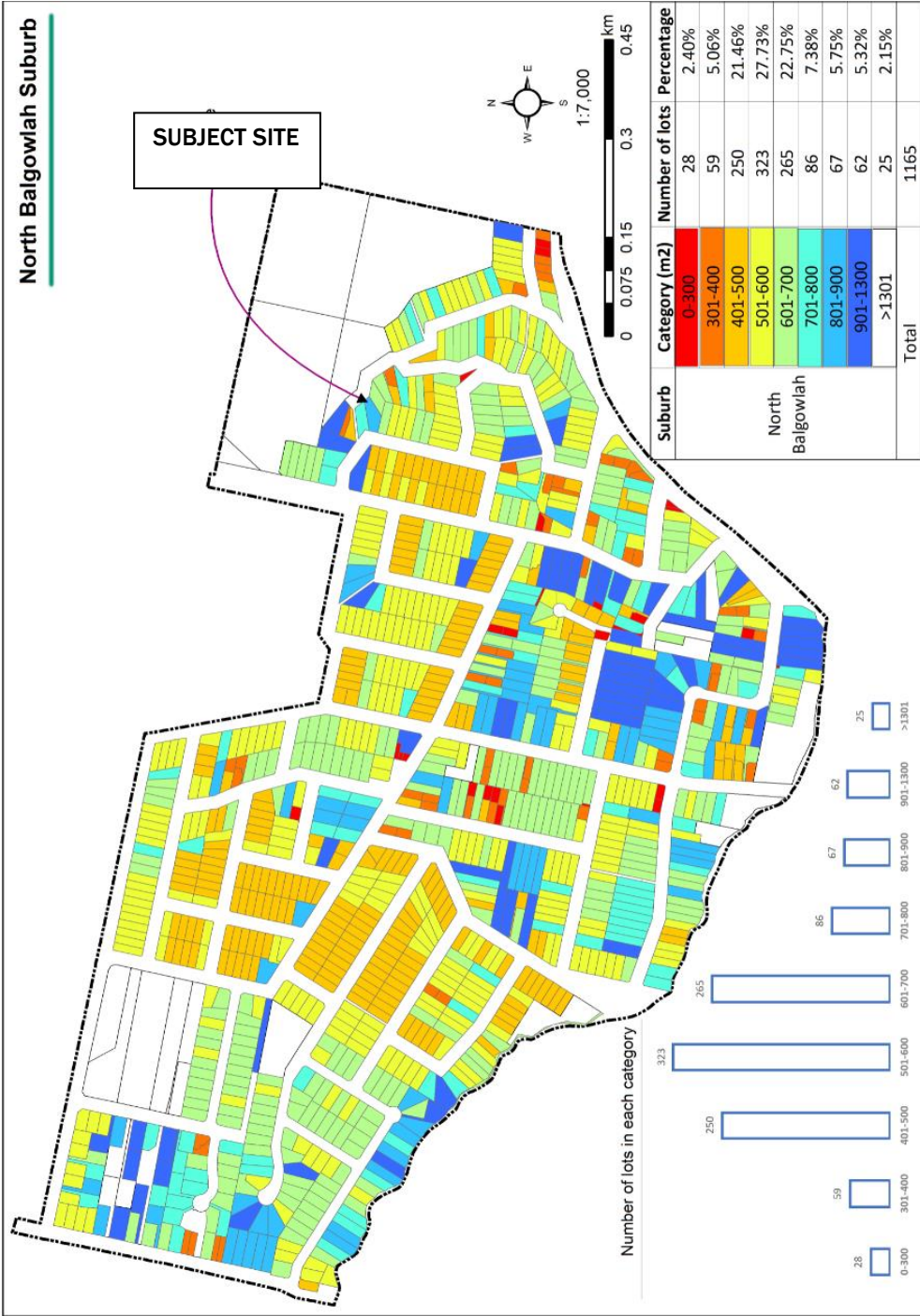


Figure 7 - allotment size distribution map for the North Balgowlah suburb (source: McGregor Coxall). Lots coloured orange (400-500m²) and yellow (500-600m²) within the local area of subject site have an area <600m²