

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2025/0317
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 22 DP 5118, 38 Undercliff Road FRESHWATER NSW 2096
Proposed Development:	Subdivision of one lot into two
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Applicant:	Sarah Eve

Application Lodged:	28/03/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	09/04/2025 to 23/04/2025
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: Part 35.2% / Part 36.67%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 0.00
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EXECUTIVE SUMMARY

This development application seeks consent for Torrens title subdivision of the existing lot into two.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposed variations to the development standard set out in Clause 4.1 Minimum Subdivision Lot Size of the Warringah Local Environmental Plan 2011.

The minimum lot size required is 450m² and the proposed development includes two undersized lots, being 291.6m² for proposed Lot 100 (equating to a 35.2% variation to the development standard) and 285m² for proposed Lot 101 (equating to a 36.67% variation to the development standard).

The proposed subdivision intends to replicate the strata subdivision of the attached dual occupancy development recently approved on the site under DA2024/1430, though by way of Torrens title subdivision to create two standalone lots. This application does not propose to link or restrict this subdivision with the approved dual occupancy development

Within this assessment report, detailed consideration is given to the proposed undersized lots, and their non-compliance with the applicable subdivision controls. The assessment establishes that the proposed lots do not achieve the minimum lot width or minimum building area required by C1 Subdivision of the WDCP 2011, and are unlikely to be of sufficient area to support compliant landscaped open space per D1 Landscaped Open Space and Bushland Setting of the WDCP 2011. The development application does not demonstrate reasonable development of the two resultant lots can be carried out, and concern is raised with respect to potential future development of the lots.

One submission was received in relation to the application, which related to the previous application DA2024/1430 and did not raise concerns as relevant to the subdivision under this application.

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

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for Torrens title subdivision of the existing lot into two new lots.

The existing lot benefits from a recent development consent DA2024/1430, which granted consent for an attached dual occupancy development. This application seeks to subdivide the lot in accordance with DA2024/1430, to result in one approved dwelling on each lot.

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 Local Environmental Plan 2011 - 4.1 Minimum subdivision lot size
Warringah Local Environmental Plan 2011 - Part 1 Preliminary
Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
Warringah Development Control Plan - A.5 Objectives
Warringah Development Control Plan - C1 Subdivision

SITE DESCRIPTION

Property Description:	Lot 22 DP 5118 , 38 Undercliff Road FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject site consists of one allotment located on the northern side of Undercliff Road, Freshwater.</p> <p>The site is irregular in shape with a frontage of 15.825 metres along Undercliff Road, and a maximum depth of 38.705 metres. The site also presents to a vehicular access laneway to the north (known as Moore Lane). The site has a surveyed area of 576.7m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single-storey detached dwelling house with attached garage.</p> <p>The site slopes down approximately 5 metres from south (front) to north (rear) and contains some vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mix of residential development types, including detached dwelling houses and residential flat buildings of varying scales.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- DA2020/1501 for demolition works and construction of a dwelling house including secondary dwelling and swimming pool was approved by Council's Development Determination Panel on 7 May 2021.
- Mod2021/0620 for Modification of Development Consent DA2020/1501 was approved by Council's Development Determination Panel on 20 October 2021.
- DA2024/1430 for demolition works and construction of a dual occupancy (attached) and strata subdivision was approved by Council on 31 January 2025. Whilst Dual occupancies are prohibited under WLEP 2011, this was permissible as a result of recent reforms contained with SEPP (Housing) 2021

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.

Section 4.15 Matters for Consideration	Comments
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 2021 (EP&A Regulation 2021)	<p>Part 4, <u>Division 2</u> of the EP&A Regulation 2021 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 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been 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) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development, with respect to lot size and dimensions, and subdivision pattern. These are included as a reasons for refusal.
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	The matter is recommended for refusal in the public interest with respect to lot size and dimensions, and subdivision pattern.

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 application has been publicly exhibited from 09/04/2025 to 23/04/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Ms Karen Warburton	1 Coronation Drive MORUYA HEADS NSW 2537

One submission was received in relation to the previous application DA2024/1430, which was for an attached dual occupancy development. Consent for DA2024/1430 was granted on 31 January 2025. The concerns raised are not relevant to the proposed subdivision under this application.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<i>Supported, subject to conditions</i> Development Engineering raises no objections to the subdivision from Torrens to Strata of future dwellings, subject to conditions. These conditions can be included in the consent if the application is to be approved.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

Housing and Productivity Contribution

Part 2 Development for which contribution is require and determination of contribution, Division 2 Housing and productivity contribution amounts, Clause 7 Base component.

This Clause details the base component amounts that apply to the calculation of the housing and productivity contribution, as set out in the following table:

Region	HPC class of development	Amount	HPC unit
Greater Sydney	Residential subdivision	\$12,000	new dwelling lot
	Residential strata subdivision	\$10,000	new strata dwelling lot
	Non-strata multi-dwelling development	\$10,000	new non-strata dwelling
	Commercial development	\$30	square metre of new GFA
	Industrial development	\$15	square metre of new GFA

Comment:

The subject site is sited within the Greater Sydney region. The proposed development is for subdivision of the existing lot into two lots. As such, if the application is to be approved, the contribution payable would be \$12,000.00.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area

2.10 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 proposed development is for subdivision only, so does not impact upon the matters above.

- 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 subsection (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 for subdivision only, so will not result in adverse impact, in accordance with the above at (1).

Division 5 General

2.12 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:

Given the above, the consent authority can be satisfied that the proposed development will not result in increased risk of coastal hazards on the subject site or surrounding land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size	Min. 450m ²	Lot 100: 291.6m ²	35.2%	No
		Lot 101: 285m ²	36.67%	No

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No

Detailed Assessment

Part 1 Preliminary

1.2 Aims

The proposed development is consistent with the Aims of the WLEP 2011 as follows:

- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*

Comment:

Not applicable. The proposed development retains the residential use of the site.

- (a) *to create a land use framework for controlling development in Warringah that allows detailed provisions to be made in any development control plan made by the Council,*

Comment:

The proposed subdivision intends to replicate the strata subdivision of the attached dual occupancy development recently approved on the site under DA2024/1430, though by way of Torrens title subdivision to create two standalone lots. Whilst the development under DA2024/1430 is demonstrably acceptable as detailed in the relevant assessment report, the Torrens title subdivision of the lot is unsuitable for the reasons detailed in this report.

- (b) *to recognise the role of Dee Why and Brookvale as the major centres and employment areas for the sub-region,*

Comment:

Not applicable. The subject site is not located in Dee Why.

- (c) *to maintain and enhance the existing amenity and quality of life of the local community by providing for a balance of development that caters for the housing, employment, entertainment, cultural, welfare and recreational needs of residents and visitors,*

Comment:

Whilst the proposed development supports the housing needs for the community by retaining potential for two approved dwellings on the subject site (as approved under DA2024/1430), it does not suitably maintain and enhance the existing amenity and quality of life in the locality for the reasons detailed in this report.

- (d) *in relation to residential development, to—*
(i) protect and enhance the residential use and amenity of existing residential environments, and
(ii) promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and
(iii) increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah,

Comment:

The proposed subdivision is not of a configuration that will reasonably protect and maintain the amenity of adjoining properties and their occupants, and is unlikely to facilitate development of appropriate bulk and scale in consideration of the applicable planning controls and the surrounding built form character. The Torrens title subdivision of the lot is not acceptable for the reasons detailed in this report.

- (e) *in relation to non-residential development, to—*
(i) ensure that non-residential development does not have an adverse effect on the amenity of residential properties and public places, and
(ii) maintain a diversity of employment, services, cultural and recreational facilities,

Comment:

Not applicable. The proposed development retains the residential use of the site.

- (f) *in relation to environmental quality, to—*
(i) achieve development outcomes of quality urban design, and
(ii) encourage development that demonstrates efficient and sustainable use of energy and resources, and
(iii) achieve land use relationships that promote the efficient use of infrastructure, and
(iv) ensure that development does not have an adverse effect on streetscapes and vistas, public places, areas visible from navigable waters or the natural environment, and
(v) protect, conserve and manage biodiversity and the natural environment, and
(vi) manage environmental constraints to development including acid sulfate soils, land slip risk, flood and tidal inundation, coastal erosion and biodiversity,

Comment:

The proposed development is for subdivision only.

The proposed subdivision is unlikely to facilitate development of appropriate design in consideration of the applicable planning controls and the surrounding built form character. The Torrens title

subdivision of the lot is not acceptable for the reasons detailed in this report.

- (g) *in relation to environmental heritage, to recognise, protect and conserve items and areas of natural, indigenous and built heritage that contribute to the environmental and cultural heritage of Warringah,*

Comment:

Not applicable. The subject site and surrounding area are not heritage-listed, within a heritage conservation area, or of indigenous heritage significance.

- (h) *in relation to community well-being, to—*
(i) ensure good management of public assets and promote opportunities for social, cultural and community activities, and
(ii) ensure that the social and economic effects of development are appropriate.

Comment:

Not applicable. The proposed development is wholly on private land.

Zone R2 Low Density Residential

The proposed development is addressed in relation to the objectives of the zone as follows:

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

Comment:

The subject site is currently developed with a single detached dwelling house. The proposed development, being for subdivision of the lot is not appropriate in this locality, for the reasons detailed in this report, with respect to lot size, pattern, and dimensions, and future development capabilities.

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

Comment:

Not applicable. The proposed development retains the residential use of the site.

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

Comment:

The proposed development, being for Torrens title subdivision of the lot, is not appropriate for the site. Whilst it is understood the intention of this application is to provide for subdivision to support the approved dual occupancy (per DA2024/1430), the potential for future development of the lot is to be considered. It is found that subdivision of the lot in this way provides opportunity for development that would not be in keeping with the low density character of the lot and area.

The inconsistency of the proposed development with the zone objectives is included as a reason for refusal.

4.1 Minimum subdivision lot size

With respect to the proposed variations to the minimum subdivision lot size for proposed lots 100 and 101, the objectives of Clause 4.1 are addressed as follows:

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

Comment:

Consideration of the proposed development was given with reference to the lots immediately surrounding the subject site, the visual catchment around the subject site, and the surrounding residential blocks within the R2 zone. Whilst it is acknowledged that other undersized lots exist in the locality, each of those lots was formed historically, being an average of 55 years ago. As such, each existing undersized lot was created prior to the current and previous planning controls, and are therefore not consistent with the desired character of the area, and the anticipated development of the land.

Further, in many instances, the existing undersized lots are reasonably consistent with the anticipated configuration and pattern of subdivision and building, in that they are of wider (but shorter) dimensions. This provides a more compatible presentation to the street than that under the proposed development, which is for two long, narrow lots.

Finally, the proposed development does not demonstrate that development of the two proposed lots for a dwelling house each that is consistent with the character of the locality can reasonably be carried out.

The lots proposed are substantially (35-36%) undersized with respect to the minimum 450m² development standard set out by this clause. Neither proposed lot demonstrates the minimum lot width, nor the minimum building area required by C1 Subdivision of the WDCP 2011. If the minimum 150m² building area required by C1 was to be shown on each lot, it is unlikely that the lots would then be capable of providing compliant landscaped open space per D1 Landscaped Open Space and Bushland Setting of the WDCP 2011 once driveways and other built elements are subtracted. This means the resultant lots would either have undersized houses, or inadequate landscaping.

Replication of existing undersized subdivision lot sizes that are not desirable and do not demonstrate reasonable independent development is not a good planning outcome and does not sufficiently protect the residential character of the locality.

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,

(c) to protect the integrity of land holding patterns in rural localities against fragmentation,

Comment:

Not applicable. The subject site is within the R2 Low Density Residential zone.

(d) to achieve low intensity of land use in localities of environmental significance,

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,

(f) to protect and enhance existing remnant bushland,

Comment:

Not applicable. The subject site is not within a locality of environmental significance, is not classified as bush fire prone land, and does not contain remnant bushland.

(g) to retain and protect existing significant natural landscape features,

Comment:

The proposed subdivision does not impact upon any natural landscape features on the subject site, adjoining sites, or the public domain.

(h) to manage biodiversity,

Comment:

The subject site is not mapped as containing species or habitats of biodiversity significance.

(i) to provide for appropriate stormwater management and sewer infrastructure.

Comment:

Appropriate stormwater management for the two proposed lots has been demonstrated per

DA2024/1430. The proposed development does not alter sewer infrastructure.

The variation to the minimum subdivision lot size development standard is considered in the section of this report relating to Clause 4.6.

4.6 Exceptions to development standards

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.1 Minimum Subdivision Lot Size

Requirement: Minimum 450m²

Proposed: Lot 100 - 291.6m² / Lot 101 - 285m²

Percentage of variation: Lot 100 - 35.2% / Lot 101 - 36.67%

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the WLEP 2011 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.1 is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

Council is not satisfied that the Applicant has demonstrated that compliance with Clause 4.1 is unreasonable or unnecessary in the circumstances of this application, as it is not consistent with the objectives of the development standard or zone, as detailed in the relevant sections of this report.

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

Comment:

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

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

The Clause 4.6 Request argues:

- **Ground 1 – Development efficiencies associated with double street frontage**
The sites double street frontage enables both allotments to have primary pedestrian and vehicular access from alternate frontages providing enhanced layout efficiencies compared to a battle-axe style subdivision.
Development consent DA2024/1430 demonstrates that each of the proposed allotments is capable of being accommodated by a dwelling house which has been found to be consistent with the applicable environmental considerations and built form controls including density.
A detached style dwelling house land use and built form outcome will be maintained to each street frontage being a site-specific environmental planning ground.
- **Ground 2 – Subdivision is compliant with the recently adopted Low and Mid Rise Housing (LMR) reform dual occupancy subdivision non-discretionary development standards**
Stage 2 of the Low and Mid Rise Housing (LMR) reforms commenced on 28th February 2025. Clause 169 of SEPP (Housing) 2021 prescribes the development standards applicable to the subdivision of dual occupancies on R2 zoned land within the mapped LMR housing area. In the absence of any subdivision standards and/ or controls applying to dual occupancy development within the Warringah LEP area it is considered reasonable to adopt these subdivision standards notwithstanding that the site is not within the LMR mapped area.

[Note: The Applicant's assessment of the proposed development against the 'LMR' controls has been removed here for brevity.]

Accordingly, approval of the WLEP minimum lot size standard variation and the subdivision pattern proposed will facilitate the subdivision outcome anticipate by the LMR reforms for dual occupancy development.

Again, in the absence of any subdivision standards and/ or controls applying to dual occupancy development within the Warringah LEP area it is considered reasonable to adopt these subdivision standards notwithstanding that the site is not within the LMR mapped area. The proposals

compliance with such standards and the consistency of the proposed lots and associated geometry with that established within the Freshwater locality is an environmental planning ground in support of the minimum subdivision lot size variation proposed.

- **Ground 3 - Consistency with varied subdivision pattern and built form characteristics established along Birkley Road**

The subdivision pattern and built form characteristics established along Undercliff Road and within the Freshwater Locality generally will ensure that the proposed subdivision, which reflects the approved built form circumstance on the site, is not perceived as inappropriate or jarring in a streetscape context and will not give rise to any adverse environmental consequences. Given such context no unacceptable precedence is created.

Council is not satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.1 for the following reasons:

- Whilst it is acknowledged that the site benefits from two street frontages and that the dual occupancy development approved under DA2024/1430 is acceptable (as approved), the future development of the site is also to be considered, as DA2024/1430 may not be carried out, and the site may be subject to further or alternative development. Torrens title subdivision of the lot into two allows potential for future development of the land that is not consistent with the desired future character of the locality.
- The subject site is not classified as within a low and mid rise housing area, so is not anticipated for development of this density.
- The reference to Birkley Road above at Ground 3 is noted as an error. It is disagreed that the proposed development is consistent with the subdivision pattern along Undercliff Road, for the reasons detailed in the section of this report relating to Clause 4.1.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is not satisfied as to the matters set out in Clause 4.6 of the WLEP 2011. As such, per Clause 4.6 (3), development consent must not be granted for the proposed development.

Warringah Development Control Plan

Built Form Controls

There are no applicable built form controls under the Manly Development Control Plan 2013.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
C1 Subdivision	No	No

Detailed Assessment

A.5 Objectives

The proposed development is inconsistent with the following objectives of the WDCP 2011:

- To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood.*
- To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome.*

As detailed in the sections of this report relating to Clause 4.1 of the WLEP 2011 and C1 Subdivision of the WDCP 2011, the proposed subdivision is inconsistent with the subdivision pattern of the locality and the desired future character of the area, including its potential future built form, landscape character, and streetscape presentation.

This is included as a reason for refusal.

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements R2 Low Density Residential zone requirements:	a) Minimum width: 13 metres	Lot 100: 7.725 to 7.915 metres	No
		Lot 101: 7.725 to 7.915 metres	No
	b) Minimum depth: 27 metres	Lot 100: Min. 37.8 metres	Yes
		Lot 101: Min. 36.955 metres	Yes
	c) Minimum building area: 150m ²	Lot 100: 142.1m ²	No
		Lot 101: 132.6m ²	No
Access	Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.	Each of the two proposed lots is accessed via a driveway connecting to Moore Lane, as approved under DA2024/1430.	Yes
	Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.	Not applicable. The subject site is accessed via formed roads.	NA
	Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.	Each of the two proposed lots can be accessed for emergency services via the driveways connecting to Moore Lane.	Yes
	Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a	The driveways approved under DA2024/1430 are compliant with the required gradients.	Yes

	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.	The driveways approved under DA2024/1430 are each less than 200 metres in length.	Yes
	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.	Not applicable. The driveways approved under DA2024/1430 are each less than 30 metres in length.	NA
	Passing bays should have regard to sight conditions and minimise vehicular conflict.	Not applicable as above.	NA
	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.	Not applicable as above.	NA
	Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.	No rights of carriageway are required.	NA
	Width of accessway is to be minimum 3.5 metres for a subdivision of 1-5 lots.	The driveways approved under DA2024/1430 are each 4.8 metres in width.	Yes
	Provision of services in rights of carriageway is to be a minimum width of 500 millimetres for up to 3 lots.	Not applicable. The proposed subdivision does not include services in any right of carriageway.	NA
Design and construction	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.	The proposed development has been reviewed by Council's Development Engineer, who is supportive subject to recommended conditions of consent.	Yes
	Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as	The proposed subdivision allows for reasonable solar access to the two proposed new lots.	Yes

	orientation, shape, size and lot width.		
Drainage	Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.	Stormwater management measures are as approved under DA2024/1430.	Yes
Restrictions	Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.	Conditions of consent have been included in the recommendation of this report accordingly.	Yes
Environmentally constrained land	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.	The site is classified as Area B on the Landslip Risk Map, being an area of low gradient sloping land. The site is not classified as subject to any other risks or hazards.	Yes
	Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	The subject site is not classified as environmentally constrained. The proposed lot boundaries are suitable for the site.	Yes
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	Not applicable. The subject site is not classified as bushfire prone land.	NA

With regard to the non-compliant minimum lot widths and building areas, the development is considered against the underlying objectives of the control as follows:

To regulate the density of development.

Comment:

The proposed development is of density that exceeds the anticipated maximum for the subject site, as evidenced by the substantial variations to the minimum subdivision lot size development standard for each lot. It is understood the site benefits from a recent approval for an attached dual occupancy development with strata subdivision per DA2024/1430. The density approved under DA2024/1430 was demonstrably acceptable. However, the future development of the site is also to be considered, as DA2024/1430 may not be carried out, and the site may be subject to further or alternative development. Torrens title subdivision of the lot into two allows potential for future development of the land that is not consistent with the desired future character of the locality.

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

To maximise and protect solar access for each dwelling.

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 the use of existing infrastructure.

To protect the amenity of adjoining properties.

Comment:

As above, development of the lot was demonstrably acceptable under DA2024/1430, including with respect to the matters above, but the future development of the site resulting from the subdivision is also to be considered. Whilst it is accepted that future development applications would be assessed on merit at the relevant time, the current application does not provide sufficient certainty that future development of the two proposed lots further to, or alternative to, the approved development under DA2024/1430 would be of acceptable impact.

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

Comment:

The subject site is not classified as bush fire prone or flood prone. The subject site is located within Area B under the Landslip Risk Map (being low to moderate-grade and low-risk). Being subdivision only, the proposed development is not expected to result in any unreasonable adverse impact.

The above is included as a reason for refusal.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- 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
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

Council is not satisfied that the Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify variation of the development standard contained within Clause 4.1 Minimum Subdivision Lot Size.

With respect to Clause 4.6(3), the Applicant has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and has not demonstrated that there are sufficient environmental planning grounds to justify the variation.

This is included as a reason for refusal.

PLANNING CONCLUSION

This development application seeks consent for Torrens title subdivision of the existing lot into two.

The application was referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposed variations to the development standard set out in Clause 4.1 Minimum Subdivision Lot Size of the Warringah Local Environmental Plan 2011.

The minimum lot size required is 450m² and the proposed development includes two undersized lots, being 291.6m² for proposed Lot 100 (equating to a 35.2% variation to the development standard) and 285m² for proposed Lot 101 (equating to a 36.67% variation to the development standard).

The proposed subdivision intends to replicate the strata subdivision of the attached dual occupancy development recently approved on the site under DA2024/1430, though by way of Torrens title

subdivision to create two standalone lots.

Within this assessment report, detailed consideration was given to the proposed undersized lots, and their non-compliance with the applicable subdivision controls. The assessment established that the proposed lots do not achieve the minimum lot width or minimum building area required by C1 Subdivision of the WDCP 2011, and are unlikely to be of sufficient area to support compliant landscaped open space per D1 Landscaped Open Space and Bushland Setting of the WDCP 2011. The development application does not demonstrate reasonable development of the two resultant lots can be carried out, and concern was raised with respect to potential future development of the lots.

The proposal has therefore been recommended for **refusal**.

REASON FOR DETERMINATION

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2025/0317 for the Subdivision of one lot into two on land at Lot 22 DP 5118,38 Undercliff Road, FRESHWATER, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone R2 Low Density Residential of the Warringah Local Environmental Plan 2011.

Particulars:

- a) The proposed undersized lots are inconsistent with the existing and desired built and landscape character of the low density locality.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1 Minimum Subdivision Lot Size of the Warringah Local Environmental Plan 2011.

Particulars:

- a) The proposed undersized lots create unreasonable density in the low density context of the site.
- b) The proposed subdivision creates potential for unacceptable future development of the land.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.

Particulars:

- a) The proposal does not demonstrate that compliance with Clause 4.1 is unreasonable or unnecessary in the circumstances of this application, in that:
 - The proposed development is inconsistent with the objectives of the R2 Low Density Residential zone, and
 - The proposed development is inconsistent with the objectives of Clause 4.1 Minimum Subdivision Lot Size of the Warringah LEP 2011.
- b) There are not sufficient environmental planning grounds to justify contravention of Clause 4.1.
- c) Development consent must not be granted, with respect to Clause 4.6 (3) of the Warringah LEP 2011.

5. 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 A5 Objectives of the Warringah Development Control Plan 2011.

Particulars:

- a) The proposed subdivision is inconsistent with the subdivision pattern of the locality and the desired future character of the area, including the site's potential future built form, landscape character, and streetscape presentation.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the minimum width and building area controls of Clause C1 Subdivision of the Warringah Development Control Plan 2011.

Particulars:

- a) The proposed lots are a maximum of 7.915 metres in width, where a minimum lot width of 13 metres is required by Clause C1.
 - b) The proposed subdivision plans depict building areas of 142.1m² (Lot 100) and 132.6m² (Lot 101), where a minimum building area of 150m² is required by Clause C1.
 - c) The proposed undersized lots are not consistent with the existing and desired built and landscape character of the low density locality, and would create unreasonable density, and potential for unacceptable future development of the land.
7. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest. The proposed development would establish an undesirable precedent for future development in the locality due to the proposed undersized lots.