

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1123
----------------------------	-------------

Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot 2 DP 1177671, 100 A Wakehurst Parkway ELANORA HEIGHTS NSW 2101 Lot 12 DP 1014199, 102 Wakehurst Parkway ELANORA HEIGHTS NSW 2101
Proposed Development:	Boundary realignment
Zoning:	C4 Environmental Living SP2 Infrastructure
Development Permissible:	Yes - Zone SP2 Infrastructure Yes - Zone C4 Environmental Living
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Zelimir Milovic Zeljka Milovic
Applicant:	Zelimir Milovic

Application Lodged:	17/08/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	24/08/2023 to 07/09/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 49,000.00
---------------------------------	--------------

PROPOSED DEVELOPMENT IN DETAIL

The proposal comprises of a boundary readjustment in the form of a resubdivision of two lots into two lots between torrens title allotments Lot 12 and Lot 2.

The boundary adjustment will result in the following new Lot sizes:

Lot 12 DP 1014199 (102 Wakehurst Parkway, Elanora Heights) - 916m² (difference of -1275m²)

Lot 2 DP 1177671 (100A Wakehurst Parkway Elanora Heights) - 2574m² (difference of +1275m²)

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

Pittwater 21 Development Control Plan - B2.2 Subdivision - Low Density Residential Areas
 Pittwater 21 Development Control Plan - C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities
 Pittwater 21 Development Control Plan - C4.3 Subdivision - Transport and Traffic Management
 Pittwater 21 Development Control Plan - C4.4 Subdivision - Public Roads, Footpath and Streetscape
 Pittwater 21 Development Control Plan - D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)

SITE DESCRIPTION

Property Description:	Lot 2 DP 1177671 , 100 A Wakehurst Parkway ELANORA HEIGHTS NSW 2101 Lot 12 DP 1014199 , 102 Wakehurst Parkway ELANORA HEIGHTS NSW 2101
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Wakehurst Parkway. The site is regular in shape with a frontage of 15.94m along Wakehurst Parkway and a depth of 146.91m. The site has a surveyed area of 2191m ² with a slope of 26.5% that falls from the north to the south. The site is located within the E4 Environmental Living zone and accommodates an existing two storey residential dwelling house.

The front of the site contains several 5m-6m trees along the eastern boundary. The rear of the site is heavily vegetated with native species.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by similar two lot subdivisions containing two storey dwelling houses.

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:

102 Wakehurst Parkway-

- Development Application DA2020/1122 for the construction of an inclinor was approved by Northern Beaches Council under delegation on the 7 January 2021.

100A Wakehurst Parkway-

- Development Application DA2018/1816 for alterations and additions to a dwelling house and subdivision of 1 lot into 2 lots was approved by Northern Beaches Council under delegation on the 30 October 2019. Development Application DA2018/1816 has not been acted on and voluntary surrender of the consent will be required in order to proceed with this application, should it be determined as approved.

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 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 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><u>Part 4, 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>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to an agreement letter from adjoining property, draft plan of subdivision and a revised bushfire report.</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 matter has been addressed via a condition of consent.</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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.

Section 4.15 Matters for Consideration	Comments
built environment and social and economic impacts in the locality	<p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land and the proposed development is for a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes / a special fire protection purpose under Section 100B of the Rural Fires Act 1997. As such, the proposal is integrated development and requires a bush fire safety authority from the NSW Rural Fire Service.

The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS as part of the bush fire safety authority, have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 24/08/2023 to 07/09/2023 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposal seeks approval for the boundary realignment of two lots.

Internal Referral Body	Comments
	<p>The comments in this proposal relate to the following applicable controls:</p> <ul style="list-style-type: none"> • Planning for bushfire protection 2019 • Pittwater LEP - Clause 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor <p>The proposed boundary realignment would not require the removal of any vegetation and is unlikely to impact upon native flora and fauna.</p> <p>A bushfire report has been submitted with the application and established that the highest level of risk is BAL 19 at the frontage of the original lot (managed land). The lot resulting from the realignment of boundaries would have a low bushfire risk and therefore APZ requirements would not necessarily require clearing of native vegetation in future development applications. However, future development applications for the resulting lots will require separate bushfire reports relating to the development applications if the land is mapped as bushfire prone land.</p>
NECC (Development Engineering)	<p>16/02/2024: An agreement letter from Owners of No 100 Wakehurst Parkway for redoing the benefits of services, access and drainage on title in favor of whole new proposed lot is provided (Internal ref: TRIM 2023/816642) An amended subdivision plan by Waterview Surveying Services, Reference 1736 showing creation of whole new legal access, drainage and services burdening Lot 1DP1177671 and benefitting whole proposed Lot 2 DP1177671 is provided (Internal ref: TRIM 2023/816641)</p> <p>Development Engineering have no objections to proposal subject to conditions.</p> <p>For Planner: The subject property is affected by a road proposal as mentioned in the letter from Transport for NSW, TfNSW Reference: SYD23/01174/01, Dated 7th Nov 2023. Please include this letter as part of approved documents.</p> <p>08/09/2023: This is not deemed to be a boundary adjustment this is deemed to be a subdivision. Backyard of 102 Wakehurst Parkway that 100A Wakehurst Parkway is proposing to adjoin doesn't have legal rights to access, drainage and services. Applicant to provide:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> An agreement from owners of No 100 Wakehurst Parkway to redoing the benefits of services, access and drainage on title in favor of whole new proposed lot. Draft plan of subdivision by surveyor creating whole new legal access, drainage and services in favor of whole new proposed lot.
NECC (Flooding)	<p>The Development Application proposes a subdivision boundary adjustment between 2 Torrens title allotments at 102 (Lot 12) and 100A (Lot 2) Wakehurst Parkway.</p> <p>102 Wakehurst Pwy fronts directly to the road and is flood affected just inside the front boundary. 100A Wakehurst Pwy is up the hill behind 100 Wakehurst Pwy and is not flood affected. The proposal is to increase the size of Lot 2 by adding the adjacent, rear half of 102 Wakehurst Pwy.</p> <p>It is considered that there would be no increase in flood risk. There are no flood related objections.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Aboriginal Heritage Office	<p>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 sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>
Roads and Maritime Service - Roads Act 1993, s138 (Non-integrated)	<p>The application was referred to Transport for NSW (TfNSW) for concurrence in accordance with Section 138 of the Roads Act 1993.</p> <p>Following a review of the submitted application by TfNSW, it is noted that TfNSW's concurrence under section 138 of the Roads Act 1993 is not required, as no works are proposed on Wakehurst Parkway. Therefore, TfNSW raises no objection to the application</p>
Integrated Development - Rural Fire Service - Rural Fires Act, s100B -	<p>The proposal was referred to NSW RFS who provided a response stating that the proposal is acceptable subject to compliance with the</p>

External Referral Body	Comments
Subdivisions and Special Fire Protection Purposes	relevant conditions under Planning for Bush Fire Protection 2019. These recommendations will be included as a condition of consent.

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)

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 1 Coastal Wetlands and littoral rainforest area

2.7 Development on certain land within coastal wetlands and littoral rainforests area

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
 - a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
 - b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
 - c) the carrying out of any of the following:
 - i) earthworks (including the depositing of material on land),
 - ii) constructing a levee,
 - iii) draining the land,
 - iv) environmental protection works,
 - d) any other development

Comment:

The proposal is for a boundary adjustment and no physical works form part of the application and therefore assessment against this control is not required.

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:

The proposal is not expected to have any impacts on the above.

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 consent authority is satisfied the proposal is not expected to have any adverse impacts on any of the 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 consent authority is satisfied the development will satisfy this control.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The consent authority is satisfied the works will not have any impact on any of the above.

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:

The development is not likely to cause increased risk of coastal hazards on that land or other land.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

Coastal management programs have been considered.

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.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone SP2: Yes Zone C4 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone SP2: Yes Zone C4 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	550sqm (Area K)	Lot 12: 916m ²	N/A	Yes
		Lot 2: 2574m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	Yes
5.1 Relevant acquisition authority	Yes
5.1A Development on land intended to be acquired for public purpose	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	no changes	N/A	N/A
Rear building line	6.5m	Lot 1: 17.1m (dwelling), 1.8m (shed)	N/A 72%	Yes No
		Lot 2: no changes	N/A	N/A
Side building line	2.5m (west)	Lot 1: no changes	N/A	N/A
		Lot 2: 16.2m	N/A	Yes
	1m (east)	Lot 1: no changes	N/A	N/A
		Lot 2: no changes	N/A	N/A
Landscaped area	50%	>50%	N/A	Yes

The proposed subdivision of two lots into two lots results in changes to the setback and landscaped area of the existing dwellings and therefore a built form assessment is provided above. For the purposes of this assessment only the setbacks that are affected as a result of the resubdivision will be included as part of the built form assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.5 Elanora Heights Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.2 Subdivision - Low Density Residential Areas	No	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.15 Stormwater	Yes	Yes
C4.1 Subdivision - Protection from Hazards	Yes	Yes
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities	Yes	Yes
C4.3 Subdivision - Transport and Traffic Management	Yes	Yes
C4.4 Subdivision - Public Roads, Footpath and Streetscape	Yes	Yes
C4.5 Subdivision - Utility Services	Yes	Yes
C4.6 Service and delivery vehicle access in subdivisions	Yes	Yes
C4.7 Subdivision - Amenity and Design	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots	Yes	Yes
D5.1 Character as viewed from a public place (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)	No	Yes

Detailed Assessment

B2.2 Subdivision - Low Density Residential Areas

Requirement
Any lot (or lots) to be created by a subdivision of an existing lot (or lots) shall have a minimum lot depth
Any lot (or lots) to be created by a subdivision of an existing lot (or lots) on land identified as Area 1 on have a minimum lot width at the building line of 16 metres.
Any lot (or lots) to be created by a subdivision of an existing lot (or lots) shall have a minimum lot width the waterfrontage.
Any lot (or lots) are to be capable of providing for the construction of a building which is safe from hazard impact on the natural environment, does not adversely affect heritage, and can be provided with adequate
A person shall not subdivide land if the allotment(s) intended to be created have a slope in excess of 1 between the highest and lowest points on any such allotment(s).
The minimum area for building shall be 175m ² .

A merit assessment has been carried out against the objectives of the control is carried out below:

- *Achieve the desired future character of the locality.*

Comment:

The proposed subdivision is consistent with development in the area. The existing buildings on the lots will be retained. The desired future character of the Mona Vale locality is maintained.

- *Maintenance of the existing environment.*

Comment:

The proposed subdivision is not expected to have any significant adverse impacts on the existing environment. The existing Lot at 100A Wakehurst Parkway has an overall slope greater than 30%, however, this is mainly as a result of the near vertical rear portion. This does not unreasonably restrict future development on the new lot as there is sufficient space for construction of a dwelling on areas of the lot that are <30% slope.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

No physical works are proposed. Views and vistas to and from private and public spaces will not be unreasonably impacted by the proposal.

- *The built form does not dominate the natural setting.*

Comment:

The existing built form on both sites will be maintained.

- *Population density does not exceed the capacity of local and regional infrastructure and community services. Population density does not exceed the capacity of local and regional transport facilities.*

Comment:

No increase to the population density will result from the proposed subdivision of two lots into two lots.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities

The proposal comprises of subdivision, specifically being a boundary adjustment and therefore existing access and off street parking facilities to both properties remains unchanged.

C4.3 Subdivision - Transport and Traffic Management

The proposal comprises of subdivision, specifically being a boundary adjustment and therefore it is not expected there will be any additional demand on the existing road network.

C4.4 Subdivision - Public Roads, Footpath and Streetscape

The proposal comprises of subdivision, specifically being a boundary adjustment and therefore no

upgrade works are required.

D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)

Description of non-compliance

Clause D5.6 Side and rear building line stipulates that development is to be setback a minimum of 2.5m to one side and 1.0m for the other side, and 6.5m to the rear boundary.

As a result of the re-subdivision of two lots into two lots the existing shed on Lot 1 will be setback 1.8m from the new rear boundary, which is a 72% non compliance to the control.

Merit consideration

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

- *To achieve the desired future character of the Locality.*

Comment:

The proposal maintains the low density residential nature of the area and therefore achieves the desired future character of the Locality. The existing shed is of a modest size and scale and is typical of that to expect within a residential area.

- *The bulk and scale of the built form is minimised.*

Comment:

The existing shed is of a modest bulk and scale and is typical of that to expect within a residential area.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

The existing works will not result in the loss of views.

- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

Comment:

As above, the existing works achieve the control.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

Comment:

The existing metal shed is not habitable and therefore it is not expected to result in unreasonable privacy impacts. The single storey nature of the shed is not expected to result in any solar access impacts.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment:

The proposed development does not involve the removal of any significant vegetation and will allow for substantial landscaping across the site.

- *Flexibility in the siting of buildings and access.*

Comment:

Flexibility is required given the resubdivision of two lots into two lots.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

The proposal does not require the removal of any trees and sufficient vegetation is retained to visually reduce the built form.

- *To preserve and enhance the rural and bushland character of the locality.*

Comment:

The proposal preserves the bushland character of the locality.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

Comment:

N/A, as the site does not adjoin any commercial zones.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental

Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2023/1123 for Boundary realignment on land at Lot 2 DP 1177671, 100 A Wakehurst Parkway, ELANORA HEIGHTS, Lot 12 DP 1014199, 102 Wakehurst Parkway, ELANORA HEIGHTS, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
1736	n/a	Plan of Proposed Subdivision	Waterview Surveying Services	n/a

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Report	J4872A	White Geotechnical Group	5 June 2023
Bushfire Report	n/a	Bushfire Planning Services	2 May 2023
Bushfire addendum letter	n/a	Bushfire Planning Services	21 December 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	22 August 2023
NSW RFS	New South Wales Rural Fire Service	6 February 2023
TfNSW	Transport for New South Wales	7 November 2023
AHO	Aboriginal Heritage Office	22 August 2023

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

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

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier if appointed for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier if one is appointed for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor if one is appointed, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier if one is appointed for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:

- i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
- Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

5. Easement Creation

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) burdening Lot 1 DP1177671 benefitting proposed Lot 2 on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) burdening Lot 1 DP1177671 benefitting proposed Lot 2 on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

Details demonstrating compliance are to be submitted to the Principal Certifier if one is appointed, otherwise to Council prior to the issue of the Subdivision Certificate.

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

6. Provision of Services for Subdivision

The applicant is to ensure all services including water, electricity, telephone and gas are

provided, located and certified by a registered surveyor on a copy of the final plan of subdivision.

Details demonstrating compliance are to be submitted to the Principal Certifier if one is appointed, otherwise to Council prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

7. Right of Carriageway

The Applicant shall create a right of carriageway (under the provisions of Section 88B of the Conveyancing Act) burdening Lot 1 DP1177671 benefitting proposed Lot 2 on the final plan of subdivision and accompanying 88B instrument, to include all vehicular access and manoeuvring areas.

Details demonstrating compliance are to be submitted to the Principal Certifier if one is appointed, otherwise to Council prior to the issue of the Subdivision Certificate.

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

8. Sydney Water Compliance Certification

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

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

Details demonstrating compliance are to be submitted to the Principal Certifier if one is appointed, otherwise to Council prior to the issue of the Subdivision Certificate.

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

9. Subdivision Certificate Application

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

Reason: Statutory requirement of the Conveyancing Act 1919.

10. Title Encumbrances

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

Details demonstrating compliance are to be submitted to the Principal Certifier if one is appointed, otherwise to Council prior to the issue of the Subdivision Certificate.

Reason: To ensure proper management of land.

11. Surrender of Consent

The applicant shall surrender to Council Development Consent No: DA2018/1816 in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

Reason: To prevent inconsistencies between consents applying to the site (ref 4.17 & 4.63 EPAA & cl68 EPA Regulation 2021).

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

Signed



Clare Costanzo, Planner

The application is determined on 27/02/2024, under the delegated authority of:



Daniel Milliken, Manager Development Assessments