

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2018/1225
<b>Responsible Officer:</b>	Alex Keller
<b>Land to be developed (Address):</b>	Lot 32 DP 25164, 35 Earl Street BEACON HILL NSW 2100
<b>Proposed Development:</b>	Torrens Title Subdivision of one lot into two
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Charmaine Annette Burke Kimbal Fred Burke
<b>Applicant:</b>	Charmaine Annette Burke Kimbal Fred Burke
<b>Application lodged:</b>	17/07/2018
<b>Integrated Development:</b>	Yes
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	25/07/2018 to 08/08/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 10,000.00

### 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 Development Control Plan - C1 Subdivision

Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation

Warringah Development Control Plan - E6 Retaining unique environmental features

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 32 DP 25164 , 35 Earl Street BEACON HILL NSW 2100
<b>Detailed Site Description:</b>	<p>The subject land has an area of 1,123.9 square metres (sqm), with a maximum depth of 47.23 metres (m) and a maximum width of 31.0m. The existing Lot has an irregular shape and is located on the southern side of Earl Street. Currently the property contains a part two-storey brick dwelling with a carport structure and landscaped gardens.</p> <p>The land slopes toward the south with two major easements for stormwater and Sydney Water supply passing through the central area of the site. Surrounding development consists of detached dwellings in landscaped settings. Lot sizes in the vicinity (within 100m) are mostly 460sqm to 770sqm with an occasional Lot being larger or smaller due to the road layout and subdivision pattern.</p> <p>The land is within a bushfire prone area and is classified as Landslip "Area B".</p>

Map:



## SITE HISTORY

**Building Application No.92/79** for brick veneer additions approved by Council in 1979.

**Building Application No.1410/82** for the construction of a carport was approved by Council in 1982.

**Prelodgement Meeting No. PLM2015/0131** for the subdivision of the site into two Torrens Title lots was held on 12 November 2015. The proposal is consistent with the advice provided within the notes.

**Development Application No.DA2017/1146** for the subdivision of the site into two Torrens Title lots was withdrawn by the Applicant.

## PROPOSED DEVELOPMENT IN DETAIL

The application proposes the following works:

- Part demolition of a timber deck and ancillary building elements with site preparation works;
- Torrens Title subdivision of one (1) Lot into two (2) Lots configured as;  
Proposed Lot 1: 573.8 sqm (minimum 14.15m x 40.21m)  
Proposed Lot 2: 550.1 sqm (minimum 12.65 x 33.04m)
- Connections for infrastructure services / easements.
- Retain the principal dwelling house on the land within proposed Lot 1.
- Establishment of a building envelope for Proposed Lot 2.

## 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 (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report. (Warringah LEP 2011)
Section 4.15 (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 (DCP) applies to this proposal.
Section 4.15 (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15(1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. Additional information was required to address some specific survey and engineering requirements due to the existing easement for stormwater. The supplementary information does not warrant re-notification pursuant to Part A.7 of the DCP.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the <i>Home Building Act 1989</i>. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter 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) 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) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental</p>

Section 4.15 matters for Consideration'	Comments
	economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development, subject to conditions to ensure future use for a dwelling is appropriate to the constraints of the reduced Lot size and other environmental considerations, including planning controls.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” 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.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><i>The Arborist's Report submitted with the application indicates the large trees numbered 8, 9 and 10 are within the proposed building footprint and therefore would require removal if development occurs.</i></p> <p><i>If the building footprint is to be part of the approved plans, removal of trees 8, 9 and 10 may be approved for removal to enable development in the area specified, with removal of any subsequent trees (and required replanting) subject to assessment of the design at time of DA submission for a dwelling.</i></p> <p><i>Recommended conditions have been included if the proposal is to be approved as submitted.</i></p> <p><u>Planning Comment</u> The environmental impact of the proposal has been considered in terms of tree canopy. The immediate impact area of the building footprint and driveway would necessitate tree removal dependent on the future dwelling design within the envelope space. This may extend to smaller trees (such as T11) however conditions for replacement canopy trees, better located to be clear of the building footprint would be considered as appropriate under any DA assessment for an</p>



Internal Referral Body	Comments
	individual dwelling house design for the within the broad shape of the footprint envelope.
NECC (Development Engineering)	<p><u>Further assessment dated 3/5/2019</u></p> <p><i>Reference is made to TRIM documents No. 2019/206802, 2019/161115, 2019/185507.</i></p> <p><i>Development Engineers have reviewed the above information and raise no objections to the proposal subject to conditions.</i></p> <p><i>For clarity the minimum finished surface level of the garage shall be no less than 119.88m AHD for flood protection and to attain adequate vehicle access from Earl Street.</i></p> <p><i>Appropriate conditions are recommended in this referral response.</i></p> <p><u>Planning Comment:</u> Development Engineering did not support the initial information submitted and required the proposal to satisfy Council policy for stormwater and development near a Council easement. The applicant has satisfied development engineering requirements with the submission of supplementary information on 8/5/2019 and prior.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<i>This property is not identified as being flood affected from natural creek or flood-prone waterways. No conditions or objection to approval is raised with respect to natural flooding risk.</i>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to <i>Ausgrid</i> . No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Integrated Development – NSW Rural Fire Service (Subdivisions and Special Fire Protection Purposes under Section 100B of Rural Fires Act)	The proposal was referred to the NSW <i>Rural Fire Service</i> (RFS) pursuant to Section 100B of the <i>Rural Fires Act 1997</i> . A referral response was provided on the 15 August 2018 by the RFS. No objection to approval is raised subject to conditions to address asset protection and provision of water utilities. This will include the trimming and or removal of trees to comply with Section 4.13 of <i>Planning for Bushfire Protection 2006</i> .

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

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

application hereunder.

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

### SEPP 55 - Remediation of Land

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

### SEPP (Infrastructure) 2007

#### Ausgrid

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

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

#### Comment:

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

#### Other Service Infrastructure Authorities

The proposal was not required to be referred to the *Roads and Maritime Service* and no other service authority referral issues are raised pursuant to the SEPP.

### Warringah Local Environmental Plan 2011

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
<b>4.1 Minimum subdivision lot size</b>	600 sqm	Lot 1: 573.8 Lot 2: 550.1	4.3% 8.3%	No No

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#### Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires consent	Yes
4.1 Minimum subdivision lot size	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

#### Detailed Assessment

#### **4.6 Exceptions to development standards**

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard has taken into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	600 sqm
Proposed:	Lot 1: 573.8 sqm Lot 2: 550.1sqm
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	Lot 1: 4.3% Lot 2: 8.3%

The proposal must satisfy the objectives of Clause 4.1 - Minimum subdivision lot size, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

#### **Is the planning control in question a development standard?**

The prescribed Minimum subdivision lot size limitation pursuant to Clause 4.1 of the WLEP 2011 is a development standard.

#### **What are the underlying objectives of the development standard?**

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the WLEP 2011 are:



(1) The objectives of this clause are 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:

Rectangular Lots of 28m to 35m in depth (generally) and 15m to 21 wide (generally) dominate the surrounding subdivision pattern with some smaller or larger / irregular shaped Lots interspersed. The site is adjacent an inter-allotment Council footpath (western boundary) and has an angled boundary with Earl Street. A Sydney Water easement and a Council stormwater easement run centrally through the middle of the site from the north east corner. This creates a significant constraint and splits the property through the middle of the long axis. Therefore, the subdivision proposed is for two (2) irregular shaped Lots of unequal size, with Lot 1 undersized by 26.2sqm and Lot 2 undersized by 49.9sqm. While both Lots comply with the minimum width, the usable (building) width is reduced by the stormwater easement and the bridges the common boundary of both proposed lots. In order to address this issue a building envelope is warranted (in keeping with *Parrot v Kiama Council [2004] NSW LEC 347*).

The prevailing average Lot size in the vicinity is generally 575sqm, therefore both Lots are consistent with the subdivision pattern and sufficient area is available the construction of a new dwelling on Lot 2 in compliance with the WDCP and WLEP 2011. Some ancillary structures for the existing dwelling will be demolished in favour of restoring landscaped open space requirements.

In this case, the extent of the variation between the two proposed lots due to potential complications with existing trees, boundary fencing and to ensure the boundary aligns in an orderly manner with the edge of the stormwater easement. This will ensure a reasonably regular, orderly subdivision.

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

Comment:

The proposal is not for commercial or industrial development.

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

Comment:

The proposal is not within a rural locality.

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

Comment:

The development is within a low intensity residential environment but is not within an area zoned for, or otherwise identified as, being of environmental significance.

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

Comment:

The land is identified as being bushfire prone due to the bushland area to the south of Mary Street. The NSW RFS has assessed the proposal pursuant to Section 100B of the Rural Fires Act 1997. The RFS conditions are suitable for inclusion as recommended with conditions of consent.

*(f) to protect and enhance existing remnant bushland.*

Comment:

There is no remnant bushland on the site with a few medium to large trees spread across the site.

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

Comment:

The site is gently sloping toward the southern end of the site. Conditions are recommended to ensure a landscape setting is maintained by way of a defined building envelope. This will ensure front, rear and side setbacks that provide adequate practicable land for usable private open space within Lot 2, any future house is not set too close to the easement. Subject to conditions, the proposal will not be inconsistent with the surrounding pattern of development, despite the non-compliance against the minimum Lot size for proposed Lot 1 and Lot 2.

*(h) to manage biodiversity.*

Comment:

The site is not identified as having significant biodiversity assets or existing natural features that warrant environmental protection.

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

Comment:

The land has a moderate slope toward the rear (southern boundary) and the proposed lots are able to drain directly to the Council stormwater easement, that passes through the site.

### **What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the *R2 Low Density Residential* zone.

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

Comment:

The proposal will enable the further development of the site for detached housing in a low density residential environment within a landscaped setting.

It is considered that the development satisfies this objective.

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

Comment:

The proposal does not involve any other permitted land uses within the subject land.

It is considered that the development satisfies this objective.

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

Comment:

Proposed Lot 1 is undersized by 4.3% against the development standard for 600 sqm minimum Lot size for the R2 Low Density Residential zone but the existing house will be retained and compliant landscaped area provided by demolishing some ancillary structures (old decking, paving). In addition to this, Lot 2 does not comply by 8.3% with the minimum lot area. However, a building envelope restriction is proposed to ensure 40% landscaping and appropriate setbacks for solar access, building separation and private open space for any future dwelling. In order to address this issue, and maintain consistency with this objective for the future development of the site, conditions are recommended to ensure a building envelope on proposed Lot 2 that will encourage a built form that will comply with the built form controls and consistent with the harmony of the urban residential environment.

It is considered that the development satisfies this objective.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?**

(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.*

Comment:

The development standard to be varied is the minimum subdivision Lot size of 600 sqm applying the R2 zone. The proposed two Lots will be marginally smaller in area which equates to a variation of 26.2sqm for Lot 1 and 49.9sqm for Lot 2. In order to enable an appropriate degree of flexibility, without compromising amenity concerns for landscaped open space, solar access, privacy, view lines, setback and a sense of openness, the use of a positive covenant is recommended to provide a building envelope that will assist to ensure future development is responsive to the site surroundings. The variation to the development standard is appropriate and not prohibitive to reasonable permissible use of the land. Potential amenity issues can be better managed by a future detailed house design complying with the local built form controls and site specific conditions of consent relating to a building envelope, suitable to compensate for the reduced Lot size.

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

Comment:

In order to achieve a better outcome from the development under the circumstances, conditions are recommended to simplify the boundary intersection at the rear of the site between Lot 1 and Lot 2. Given the resultant Lot area, site constraints and allowing for certain State Planning instruments that will permit various type of ancillary development, the imposition of a positive covenant by conditions of consent is warranted to maintain the desired residential character, including the aims and objectives for the LEP and DCP.

(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.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

Comment:

Compliance with the development standard is unreasonable in the circumstances given that the variation of either 4.3 or 8.3% would not prevent the construction of a medium sized family home on either Lot and that a landscape setting will remain with consistent setbacks to adjacent land. The environmental constraints of the site are not sufficient to prevent development of the site for a dwelling house consistent with the Warringah LEP and DCP, including compliance with all built form controls. To prevent the over-development of either Lot, this issue is to be managed by the use of a positive covenant for a building envelope on proposed Lot 2. The proposal has provided a design response that sufficiently addresses the environmental features of the site such that contravening the development standard has no unreasonable impact or precedent, subject to conditions.

(4) Development consent must not be granted for development that contravenes a development standard unless:

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Comment:

The applicant has provided a written request to address matters under subclause 3. A comprehensive further submission by the applicant pursuant to Clause 4.6 was submitted on the 18 June 2019, prepared by *Vaughan Milligan Consulting*. This further information has been considered in detail and is satisfactory to address the reasons for variation to the development standard.

*(ii) the proposed development will be in the public interest because it is consistent with the*

*objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Comment:

For reasons detailed above, the proposal is considered to be consistent with the public interest, subject to conditions and the objectives of the R2 Low Density Residential zone in the WLEP 2011.

*(b) the concurrence of the Director-General has been obtained*

Comment:

Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Minimum Subdivision Lot Size Development Standard is assumed.

## Warringah Development Control Plan

### Built Form Controls

#### **Proposed Lot 1**

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	No change	N/A	Yes
B3 Side Boundary Envelope	45 degrees at 4m East 45 degrees at 4m West	No change No change (Existing breach)	N/A N/A	Yes No As approved
B5 Side Boundary Setbacks	0.9m East  0.9m West	3.5m (After removal of some ancillary structures)  0.9m (Existing)	N/A  No change	Yes  Yes
B7 Front Boundary Setbacks	6.5m	5.8m Existing	N/A	No As approved
B9 Rear Boundary Setbacks	6.0m	4.2m	N/A No change	No As approved
D1 Landscaped Open Space (LOS) and Bushland Setting	40% 229sqm	40% (After removal of selected)	N/A	Yes

		structures) 231sqm		
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### Proposed Lot 2

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	Up to 7.2m Building envelope	N/A (No change)	Future dwelling able to comply. (as per concept plan)
B3 Side Boundary Envelope	45 degrees at 4m East 45 degrees at 4m West	Within envelope  Within envelope	N/A  N/A	Future dwelling able to comply. (as per concept plan)
B5 Side Boundary Setbacks	0.9m East 0.9m West	2.0m (Building envelope) 3.5m (Building envelope)	N/A  N/A	Future dwelling able to comply. (as per concept plan)
B7 Front Boundary Setbacks	6.5m	8.0m (Building envelope)	N/A	Future dwelling able to comply. (as per concept plan)
B9 Rear Boundary Setbacks	6.0m	6.0m (Building envelope)	N/A	Future dwelling able to comply. (as per concept plan)
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (220sqm)	50% (279 sqm)	N/A	Future dwelling able to comply. (as per concept plan)

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
B9 Rear Boundary Setbacks	Yes	Yes
C1 Subdivision	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

## Detailed Assessment

### **C1 Subdivision**

Component	Requirement	Proposed	Compliant
<b>Lot requirements</b>	<p>R2 Low Density Residential zone requirements:</p> <p>Proposed new allotments:</p> <p>a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150 sqm</p>	<p><u>Lot 1</u> a) Minimum width: 14.1*m b) Minimum depth: 40.2m; and c) Minimum building area: 150 sqm</p> <p><u>Lot 2</u> a) Minimum width: 16.9*m b) Minimum depth: 33.4*m; and c) Minimum building</p>	<p><u>Lot 1</u> Yes Yes Yes</p> <p><u>Lot 2</u> No (Refer to discussion below this table) Yes Yes</p> <p>* Boundary to boundary usable dimensions are compromised by the</p>

		area: 150 sqm	easement. This warrants a restrictive covenant for building envelope.
<b>Access</b>	<p>Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.</p> <p>Where access is proposed to a section of un-constructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.</p> <p>Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.</p> <p>Driveways in excess of 200 metres will not be allowed for residential development.</p> <p>Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.</p> <p>Passing bays should have regard to sight conditions and minimise vehicular conflict.</p>	Each proposed lot has direct and sole driveway access to Earl Street.	Yes

Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay.

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

Width of accessways are to be as follows:

Number of lots to be serviced	Width of clear constructed accessway (m)
1 - 5	3.5
6 - 10	5.0
in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)

Provision of services in rights of carriageway are as follows:

Number of lots to be serviced	Additional width to be provided in Right of Carriageway

	<table><tr><td></td><td>(m)</td></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>		(m)	Up to 3 lots	0.5	4 or more lots	1.0		
	(m)								
Up to 3 lots	0.5								
4 or more lots	1.0								
<b>Design and construction</b>	<p>All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards.</p> <p>Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.</p>	<p><u>Construction</u> Appropriate conditions may be imposed to ensure that the drainage design and construction is in accordance with Council specifications.</p> <p><u>Design</u> The creation of two Lots will result in the construction of one additional dwelling house adjacent the existing house, to be retained. A future compliant dwelling could be built to 8.5m in height.</p> <p>The submitted plans indicate a wide separation of 2.0m for the side wall along the eastern boundary of proposed Lot 2. Between Lot 1 and Lot 2 a wide building separation will occur due to the easement through the centre of the existing Lot.</p> <p>Both Lots are undersized in area and constrained by the easement. Therefore, it is necessary for a building envelope be imposed that will ensure compliance with the built form controls and ensure the building bulk and built form is consistent with the</p>	<p>Yes - Construction addressed with the subdivision certificate. A DA will be required for a new dwelling on Lot 2.</p> <p>Yes - subject to conditions for positive covenant</p>						

		pattern and scale of surrounding development. This issue has been resolved by a positive covenant to maximise landscaped open space, increase spatial separation and maintain consistency with the low density pattern of development.	
<b>Drainage</b>	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.	Each proposed allotment is capable of draining to Council's drainage infrastructure already within the site that leads to Mary Street.	Yes
<b>Restrictions</b>	Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.	The proposed allotments are subject to existing easements that impose restriction of the use of the land to protect stormwater and Sydney Water assets.	Yes
<b>Environmentally constrained land</b>	In areas subject to constraints such as	The site is not located within flood a plain area	Yes. Conditions applied.

	<p>flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment.</p> <p>Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.</p>	<p>but local stormwater flow would affect the site as per there flood report due to the overland flow path.</p>	
<b>Bushfire</b>	<p>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.</p>	<p>The site is located within bushfire prone land</p>	<p>Yes. Conditions applied.</p>

### Description of non-compliance and/or inconsistency

The development does not comply and/or is inconsistent with the following components of Clause C1:

- Lot Requirements; and
- Design and Construction.

The width or depth of the property does not create a significant constraint of the land except for the wide easement area through the middle of the site.

With respect to 'Design and Construction' the development the available area is compromised by the easement. With dwellings permitted to a height of 8.5m, this could potentially create unreasonable amenity impacts to the occupants of the new dwellings and to the appearance of the streetscape generally due to a more congested visual outcome than is currently evident for properties surrounding the site. In order to address this issue the use of a positive covenant is recommended to limit future building bulk and ensure compliance with the building envelope and wall height and manage spatial separation, thereby providing future development outcomes that are consistent with the streetscape, despite the compromised Lot width. This issue is addressed by conditions of consent.

### Merit consideration

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

- *To regulate the density of development.*



#### Comment

The development will result in an additional dwelling in the local area which is not considered to unreasonably impact upon service infrastructure.

However, the provision of the new dwelling will result in a more visually and physically congested (and by implication, more dense) arrangement, if not managed appropriately. The use of a positive covenant for a building envelope for Lot 2 is required to ensure consistency with other residential development in the local area where the lots are of a larger size (i.e. 600sqm plus). However neither lot is below the average lot size in the vicinity however the existing private open space has been reduced for the dwelling on Lot 1 with the non-compliant minimum rear setback (existing) despite the compliant Lot depth.

Because of this potential conflict with the established character of the local area, and the absence of detailed house design plans for the new Lot, conditions of consent are recommended to manage setbacks, landscaping, spatial separation, view lines, solar access and compliance with the Warringah DCP 2011 .

Subject to conditions the subdivision and resulting development is considered to be consistent with this Objective.

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

#### Comment

The reduced area of the land will influence the building-to-land ratio of the site but is not unreasonable for the existing streetscape that is characterised by Lots smaller than 600sqm. In order to address this issue and maintain future consistency with the streetscape the use of a building envelope is recommended by conditions of consent. Applying suitable setbacks by consent is offered by the applicant in the form of a detailed building envelope, in order to allow some flexibility with future property owners to design their own home for the new Lot. Some minor changes are proposed to the existing dwelling house to be retained for Lot 1 so that landscape open space is maintained at 40% compliance for this Lot by virtue of the subdivision.

Subject to conditions, this arrangement will not create an unreasonable visual impact on the appearance of the streetscape and potential issues of spatial separation, views, solar access and building bulk can be appropriately managed by the use of a positive covenant limiting the building envelope comparative to the smaller available land area.

The development is not considered to be consistent with this Objective.

- *To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.*

#### Comment

The subdivision plan indicates that there will be sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.

The development is considered to be consistent with this Objective.

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

#### Comment

The reduced land area and subdivision pattern may affect future direct sunlight access (by a future dwelling house) to adjacent land east of the site (more so than to the west). Therefore, the side setback separation distance is essential to provide some spatial separation and compliance with the side boundary envelope. In order to resolve this issue wide setbacks are required and these are recommended to be set at 2.0m from the side boundaries. This will enable any future residential development to be consistent with this Objective.

- *To maximise the use of existing infrastructure.*

#### Comment

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

The development is considered to be consistent with this Objective.

- *To protect the amenity of adjoining properties.*

#### Comment

The creation of narrow allotments results in more constrained areas to locate building footprints. The footprints detailed on the Subdivision Plan highlights this constraint by placing the side setbacks at 2.0m or more for proposed Lot 2 to accommodate a dwelling that has a reasonable footprint area.

The setback to walls which have an indicative length of 19m for a potential two-storey house and is considered to be sufficient to address bulk and scale when viewed from the neighbouring property to the east and west. The use of a building envelope will ensure the dwelling steps in or is setback along the side boundaries to compensate for the side wall plane.

The development is not considered to be consistent with this Objective.

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

#### Comment

The site is located in a bushfire and/or flood prone land and the NSW RFS has provided conditions to address their concerns for a bushfire safety authority.

The development is considered to be consistent with this Objective.

Having regard to the above assessment, it is concluded that the proposed development, subject to conditions is consistent with the relevant objectives of the Clause C1 in the WDCP 2011 and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **E1 Preservation of Trees or Bushland Vegetation**

#### Merit consideration:

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

- *To protect and enhance the urban forest of the Northern Beaches..*

Comment:

The removal of trees from the site can be effectively off-set by future replacement planting with the development of the land once a development application for a house on the site is made. Some preparation works for the subdivision will require the removal of trees in order to comply with *Planning for Bushfire Protection 2006*. This is addressed by conditions.

- *To effectively manage the risks that come with an established urban forest through professional management of trees.*

Comment:

The NSW Rural Fire Service has provided conditions of consent to address bushfire safety authority considerations and risks pursuant to Section 100B of the *Rural Fires Act 1997*. An Arborist report has also been submitted identifying the health of the trees and their situation with regard to the subdivision and potential development for a dwelling in the central area of the site.

- *To minimise soil erosion and to improve air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise reduction..*

Comment:

The application has been prepared with the inclusion of erosion and sediment control details. The tree removal required will not adversely affect water quality or stormwater drainage through the site, subject to conditions.

- *To protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities.*

Comment:

The site does not contain any threatened species population or endangered species habitat. Landscaped areas are currently used as a domestic garden area with scattered remnant, or previously planted native trees. There is no dense natural bushland areas on the site .

- *To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long-term.*

Comment:

The subdivision, and construction of a future residential dwelling, will lead to the removal of some trees that were planted or have naturally grown in the area that takes up the building envelope. However, the planting of new trees and retention of the existing trees is supported within the identified landscaped areas of the site. Subject to site management to address bushfire safety this objective can be maintained over the long term.

- *To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.*

Comment:

Selected trees can be retained and replacement planting provided, subject to a future dwelling design, to maintain and enhance the scenic value of the landscaped setting for the site and its surroundings.

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

## **E6 Retaining unique environmental features**

Merit consideration:

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

- *To conserve those parts of land which distinguish it from its surroundings.*

Comment:

The site does not contain any distinguishing rock outcrops or special land form features (such as creek lines, perched swampland) that occur in the Warringah area. There are however a number of trees clustered on the eastern side of the site and some of them would need to be removed for the building envelope and to comply with *Planning for Bushfire Protection 2006*. Some of the trees are within the stormwater easement and therefore suitably located in parts of the site that will remain as landscaped open space. Generally trees can be retained in outer area of the asset protection zone for bushfire if there is no interlocking canopy / or they do not create a direct flame hazard to a dwelling. In this case, some thinning and selected removal of trees within the building footprint is necessary, as a consequence of creating the building envelope for the subdivision. Replacement trees may be planted in more appropriate locations with the development of a future dwelling on proposed Lot 2. This may be required with the future dwelling application as the dwelling may have ancillary structures such as terrace areas, OSD, pathways and the like outside the building envelope.

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

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

The proposal will not significantly effect 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 Council Contributions Plan 2018

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

### CONCLUSION

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

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

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

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

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

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

### RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1225 for Torrens Title Subdivision of one lot into two on land at Lot 32 DP 25164, 35 Earl Street, BEACON HILL, subject to the conditions printed below:

#### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
19519G-01 Rev 1 Plan of Subdivision	30.4.2018	Bee and Lethbridge
19519H Landscape, demolition and site works	30.4.2018	Bee and Lethbridge

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
B-11-264297-1D Stormwater	28.7.2016	Civil and Structural Engineering

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Bushfire Risk Assessment	18.2.2016	Bushfire Planning Services
Flood Report	18.4.2018	Civil & Structural Engineering

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

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
NSW Rural Fire Service	Response Response RFS	15 August 2018

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's.

3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) Where applicable, 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 Certifying Authority 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, where applicable, within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority 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, 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 Certifying Authority 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) 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 a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) 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.
- (d) 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.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) 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.

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

## **FEES / CHARGES / CONTRIBUTIONS**

### **5. Security Bond**

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

Reason: To ensure adequate protection of Council's infrastructure.

### **6. Construction, Excavation and Associated Works Bond (Drainage)**

A Bond of \$5,000.00 as security against any damage to Council's stormwater drainage infrastructure as a result of undertaking any works as part of this consent.

Reason: Protection of Council's Infrastructure

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

### **7. Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification.

<https://www.warringah.nsw.gov.au/sites/default/files/documents/policies-register/environment/water-management-policy/2016-011845-water-management-policy-current.pdf>

A statement of compliance is to be prepared by a suitably qualified Civil Engineer and submitted to the Certifying Authority for approval prior to issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure (DACENF11)

**8. Submission of Engineering Plans**

Engineering plans are to be submitted to the Northern Beaches Council for approval pursuant to section 68 of Local Government Act 1993. The submission is to include four (4) copies of Civil Engineering plans for the design of overland flow swale/channel which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy.

The applicant is to complete and lodge the following form with Council.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/stormwater-drainage-approval/4022-stormwater-drainage-approval-application-18-19.pdf>

Associated fee with the above application is to be paid at time of lodgement.

The overland flow swale/channel must be:

1. Minimum 2.6 metres wide
2. Located centrally over the centerline of Council's existing stormwater pipeline traversing the development site.
3. Proposed rip rap dissipator located at the southern end of the development site is to be located wholly within the proposed drainage easement.
4. Proposed landscaping within the swale/channel is to be to Council's Team Leader, Stormwater Operations & Planning satisfaction.

Stormwater runoff from the existing dwelling on proposed Lot 1 is to be collected and piped to Council's stormwater pipeline. Details of the proposal are to be provided to Council.

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

Reason: To ensure compliance with Council's specification for engineering works.

**9. Pre-Construction Stormwater Assets Dilapidation Report**

Survey a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at:

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.pdf>

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure

**10. Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

Advice to Applicants: At the time of determination in the opinion of Council, the following (but not limited to) Australian Standards are considered to be appropriate:

- (a) AS2601.2001 - Demolition of Structures\*\*
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings\*\*
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting\*\*
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) \*\*
- (e) AS 4970 - 2009 'Protection of trees on development sites'\*\*\*

\*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website

[http://www.humanrights.gov.au/disability\\_rights/buildings/good.htm](http://www.humanrights.gov.au/disability_rights/buildings/good.htm)

\*\*Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to. (DACPLC02)

**11. Waste Management Plan**

A Waste Management Plan must be prepared for this development, as applicable. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

**12. Tree protection**

- (a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless approved under this consent or are otherwise exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

- (b) Tree protection

- i) No tree roots greater than 30mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 30mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause

E1 Private Property Tree Management and AS 4373 Pruning of amenity trees  
v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

## **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

### **13. Civil Works Supervision**

All civil works approved in the Construction Certificate are to be supervised by an appropriately qualified and practising Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority

Reason: To ensure compliance of civil works with Council's specification for engineering works.

### **14. Notification of Inspections**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Construction of overland flow swale/channel

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification

Reason: To ensure new Council infrastructure is constructed to Council's requirements.

### **15. Maintenance of Road Reserve**

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

### **16. Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

### **17. Installation and Maintenance of Sediment Control**

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.



## CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

18. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**  
All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification). Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted) - Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Occupation Certificate.  
  
Reason: Protection of Council's Infrastructure
  
19. **Post-Construction Dilapidation Survey**  
A post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at  
  
<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.pdf>  
  
The post construction dilapidation report must be submitted to the Council for review and the Principal Certifying Authority prior to the issue of the Occupation Certificate. Any damaged to Council's stormwater infrastructure is to be rectified in accordance with Council's technical specifications prior to the release of the security bond.  
  
Reason: Protection of Council's Infrastructure
  
20. **Removal of All Temporary Structures/Material and Construction Rubbish**  
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.  
  
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.  
  
Reason: To ensure bushland management. (DACPLF01)
  
21. **Waste Management Confirmation**  
Prior to the issue of a Final Occupation Certificate, evidence / documentation, if required, must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.  
  
Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.
  
22. **Sydney Water**  
A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from 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) <<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 charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACPLF08)

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

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

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

### **24. Restriction as to User - Proposed Works**

A restriction as to user shall be created on the Title restricting the construction of any future "dwelling" to the building envelope footprint, setbacks, height and minimum finished floor levels of the dwelling on proposed Lot 2 shown on the stamped plans, for development and planning reasons, including flood protection in accordance to the levels nominated in the flood report.

Inclusive of the above:

- i) The finished surface level of any new vehicle crossing servicing proposed Lot 2 along the northern property boundary alignment must be no lower than RL120.80m AHD.
- ii) Minimum finished surface level of the garage shall be no lower than 119.88m AHD.
- iii) Demolition work for proposed Lot 1 is to be completed before the release of the subdivision certificate.

The terms of such restriction are to be prepared by a registered surveyor to Northern Beaches Council's satisfaction at the applicant's expense. Northern Beaches Council shall be nominated as a party to release, vary or modify such restriction.

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

Reason: Planning and development control pursuant to WLEP 2011 and WDCP.

### **25. Services**

All utilities/services and street lighting is to be installed by the applicant/developer. Certification is to be provided to Council stating the above requirement has been complied with. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the

issue of the Subdivision Certificate.

Reason: Public safety and to ensure services have been provided for the newly created lots

26. **Stormwater Drainage and Utility Services Plan**

A plan of subdivision identifying the location of water, gas, telephone, electricity and stormwater drainage in relation to boundaries and/or relevant easements, prepared by a registered surveyor is to be submitted to Council. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that services have been provided with appropriate easements as required by the Conveyancing Act 1919

27. **Survey Plan - Construction Identification**

A declaration by a registered surveyor shall be provided to Council as evidence that all construction has been effected within the appropriate property, easement boundaries and rights of carriageway. This shall be in the form of a copy of the final subdivision or easement plan, with the distances from the boundaries to the edges of these structures endorsed in red thereon and signed by the surveyor. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure accurate location of buildings, access and services

28. **Sydney Water Compliance Certification**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from 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) <<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 charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

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

29. **Easement for Drainage**

An easement for drainage (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision the accompanying 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s). Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

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

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

Existing drainage easement 1.83 metre wide is to be extinguished. An easement to drain water shall be created in favour of Council over the channel/floodway to encompass the 1 in 100 year recurrence frequency predicted water surface level. The easement shall be minimum 2.6 metres wide and is to be contained wholly within proposed Lot 2. The easement is to be centrally located over the centerline of Council's stormwater pipeline traversing the development

site.

Terms of the easement shall include restricting any alteration to the levels and/or any construction on the land. No structures are to be constructed over the overland flow swale/channel without written approval from Council. Any proposal to construct over the overland flow swale/channel must be obtained from Council pursuant to Section 68 of Local Government Act 1993. Above terms of the easement must be to the satisfaction of Northern Beaches Council.

The easements are to be detailed on the final plan of subdivision. All costs associated with the above are to be borne by the applicant.

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

Reason: To identify flood affected areas on the property title

31. **Easement for Services**

An easement for services (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and the accompanying 88B instrument to ensure all utility services are located within the appropriate easement(s). Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate

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

32. **Overland flow swale/channel Certification**

Prior to issue of a subdivision certificate and upon completion of the construction of the overland flow swale/channel and associated rip rap, a consulting engineer registered with Engineers Australia is to certify the constructed works are in accordance with approved plans, and include a "works as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved plans.

Reason: To ensure stormwater disposal is constructed to standard specifications AUSPEC and approved plans

33. **Release of Subdivision Certificate**

To enable the lodgement of the final plan at the NSW Land and Property Information Department the Subdivision Certificate shall not be issued until the Final Occupation Certificate for the approved development has been issued.

Reason: To ensure that the plans relate to approved development

34. **Subdivision Certificate Application**

Prior to the issue of the Subdivision Certificate, a completed Subdivision Certificate form, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919 are to be submitted to Council. Nine copies of the final plan of subdivision are to be submitted. 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

35. **Title Encumbrances**

All easements, rights of carriageway, positive covenants and restrictions as to user as indicated on the plans and required by this consent are to be created on the title naming Northern Beaches Council as the sole authority empowered to release or modify. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate

Reason: To ensure proper management of land

36. **Selected Tree Removal**

The following trees identified in the *Arboricultural Impact Assessment Report*, dated 11.10.2017, prepared by Damian Green are to be removed by the applicant prior to the release of the Subdivision Certificate:

- Tree "T8", tree "T9" and tree "T10".

Any additional thinning or removal of other trees on the site, where required, is to be in compliance with conditions of consent, as detailed by the applicant's Bushfire Safety consultant and a consultant arborist prior to works commencing and details being supplied with the subdivision certificate application.

Details are to be provided to the Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Tree management and safety.

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

**Signed**



**Alex Keller, Principal Planner**

The application is determined on 25/06/2019, under the delegated authority of:



**Anna Williams, Manager Development Assessments**