

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0501
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Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 1 SP 57338, 1 / 2 Beach Road COLLAROY NSW 2097
Proposed Development:	Alterations and additions to a dwelling house and Torrens Title Subdivision
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	John Andrew Bates David John Ronson
Applicant:	MB Town Planning Pty Ltd

Application Lodged:	18/05/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	29/05/2020 to 12/06/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 64.2%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 43,670.00
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EXECUTIVE SUMMARY

The application seeks approval for a Torrens Title subdivision of an existing dual occupancy. The dual occupancy is approved, but is currently a prohibited use in the R2 - Low Density Residential zone and benefits from Existing Use Rights.

Specifically, the proposal involves the creation of two new lots as follows:

Lot 1: 214.6m²

Lot 2: 283.8m²

The development standard for minimum lot size is 600m². As such, Lot 1 would result in a 64.2% variation to the development standard and Lot 2 would result in a 52.7% variation to the development standard.

The application is referred to the NBLPP due to the extent of variation to the development standard.

The proposal also involves a minor reduction to the building bulk on proposed Lot 2 to provide greater separation between the existing dwellings.

Although the proposal would not result in any further impact caused by existing dwellings, the subdivision would restrict all opportunity for future development to provide a density that is acceptable for the area.

The application to vary the development standard under Clause 4.6 of the Warringah LEP 2011, is not supported due to the inconsistency of the proposed lots with the predominant subdivision pattern, and the lack of environmental planning grounds to justify the significant variation.

Therefore, it is recommended that the application be refused.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for torrens title subdivision and minor alterations to the existing dwelling (No.2).

In detail this involves:

Subdivision

- Lot 1 - 214.6m²
- Lot 2 - 283.8m²

Alterations to the Dwelling No. 2

- Removal of existing robe
- Alterations to ensuite to provide greater separation between the two dwellings

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 - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - C1 Subdivision

SITE DESCRIPTION

Property Description:	Lot 1 SP 57338 , 1 / 2 Beach Road COLLAROY NSW 2097
Detailed Site Description:	<p>The subject site consists of an allotment located on the western side of Beach Road and on eastern side of Cliff Road .</p> <p>The site is regular in shape with a frontage of 8.32m along Beach Road and 13.435m. The site has a surveyed area of 498.4m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a detached dual occupancy on the site.</p> <p>The site contains one dwelling which faces Beach Road and one dwelling which faces Cliff Road. The dual occupancy is separated in the middle of the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time.

A search of Council's records has revealed the following relevant history:

- **DA95/566** - Alterations and additions to an existing building to create a dual occupancy and strata subdivision was approved on 7 November 1995.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been

Section 4.15 Matters for Consideration'	Comments
	<p>addressed via a condition of consent.</p> <p>Clause 98 of the EP&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>
<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>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

EXISTING USE RIGHTS

Consent was granted for the alterations and additions to create a dual occupancy on 7 November 1995. Currently, a dual occupancy is a prohibited land use in the zone of the subject site (R2 Low Density Residential zone).

A strata subdivision plan from 26.8.1998 confirms that the site has been established as a dual occupancy, and this is the existing use.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 29/05/2020 to 12/06/2020 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
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Warringah Local Environmental Plan 2011

Is the development permissible?	No
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
Minimum Subdivision Lot Size:	600m ²	Lot 1: 214.6m ² Lot 2: 283.8m ²	Lot 1: 64.2% Lot 2: 52.7%	No No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-Compliance:

Development standard:	Minimum Subdivision Lot Size
Requirement:	600m ²
Proposed:	Lot 1: 214.6m ² Lot 2: 283.8m ²
Percentage variation to requirement:	Lot 1: 64.2% Lot 2: 52.7%

Assessment of Request to Vary a Development Standard

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to Development Standards

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

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

Comment:

Clause 4.1 - Minimum subdivision lot size development standard is not 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.*

(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*
- (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, and*
- (b) the concurrence of the Secretary has been obtained.*

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Applicants Written Request

The applicants written request argues, in part:

- The dwellings are part of the existing character formed in the area and subdivision would not change of the dual occupancy would not change this character
- The proposal will not have an adverse impact on heritage
- A reduction in built form will enhance livability
- The subdivision will allow landscaping and private open space to be retained
- The proposal will result in the conversion of a prohibited use to be two permissible uses
- The proposal will not impact on the residential capacity of the subject site (there will be no increase in housing density)

Despite the proposal not resulting in an increase in housing density or any substantial change to the visual character of the street or locality and there being no amenity impacts arising, the proposal will result in a lot size and pattern that is inconsistent with the surrounding area. As such, the proposed variation to the minimum lot size development standard would diminish any opportunity for future development of housing to be in a form that is consistent and complementary with the neighbouring dwellings on similar size lots.

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(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:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Minimum Subdivision Lot Size development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

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:

The subject site is in an a neighbourhood in which corner allotments are of a similar size and configuration and lots between each corner are also of a similar size and configuration (see extract of area map and surrounding and cadastre in Photo 1 below).

To the north of the subject site, there are 5 lots (4 Beach Road to 12 Beach Road), which are of a similar size and shape to the subject lot. Furthermore, each of these lots has a boundary to both Beach Road and Cliff Road.

The proposal would change this configuration of boundaries to each road, and also be of a size and shape that is inconsistent with the neighbouring northern lots. As such, the subdivision of the

land would result in a pattern, size and configuration that is inconsistent with the existing lots in the locality.

The proposal does not comply with this objective.



Photo 1: Subdivision pattern in vicinity of the subject site (highlighted in blue)

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

Comment:

Not applicable. The proposal is in a residential zone.

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

Comment:

Not applicable. The proposal is not in a rural area.

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

Comment:

The proposal would result in an irreversible change in the intensity and density that is not consistent with the character of the area (given the use is currently prohibited, and the lot size variation is significant). This means the large variation to the lot size development standard would result in a greater change in the subdivision qualities in the area than can reasonably be expected for this coastal area and low density residential zone.

The proposal does not comply with this objective.

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

Comment:

Not applicable.

(f) to protect and enhance existing remnant bushland.

Comment:

The site does not contain any significant amount of remnant bushland. However, the proposal for two lots would restrict opportunity for any remnant bushland to be provided on the site in the future.

The proposal does not comply with this objective.

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

Comment:

The proposal would not result in any unreasonable impact to natural landscape features.

The proposal complies with this objective.

(h) to manage biodiversity.

Comment:

The proposal does not remove any significant landscape features or vegetation, and does not add building bulk. As such, the proposal would not have any unreasonable impact on biodiversity.

The proposal complies with this objective.

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

Comment:

The houses are currently provided with sufficient sewer infrastructure, and Council's Engineer has stated that appropriate Stormwater management could be provided for the site.

The proposal complies with this objective.

Zone Objectives

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.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposed subdivision would result in a density that is significantly greater (62%) than as expected under the development standard. Future development of the proposed lots would therefore have no opportunity to complement the low density character of surrounding allotments. As such, the proposal does not support the low density environment, and does not sufficiently allow for improvements to landscaped settings.

The development does not satisfy these objectives.

Conclusion

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the R2 Low Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning & Infrastructure, 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 inconsistency of the variation to the objectives of the zone and the development standard, the concurrence of the Director-General for the variation to the Minimum Subdivision Lot Size Development Standard cannot be assumed.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B9 Rear Boundary Setbacks	6m	0.9m-1.295m Existing: 0m-0.5m	78.4%-85% Existing 99%-100%	No (see comments)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C1 Subdivision	No	No
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	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
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes

Detailed Assessment

B9 Rear Boundary Setbacks

Although the proposed alterations do not comply with the rear setback control (6.0m), the proposal increases the setback of the eastern dwelling to the proposed new boundary from Nil to 0.9m. The reduction of building bulk is supported, however, the proposed variation to the rear setback control is not supported as it is contrary to the objectives of the control.

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	R2 Low Density Residential zone requirements: Proposed new allotments:	Minimum Width:8.32m Minimum depth: 16m Minimum building area: 90m ²	No - Refer to discussion below this table



	<p>a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m²</p>		
Access	<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 unconstructed 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> <p>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.</p> <p>Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.</p>	Driveways are 3.5m	Yes



	<p>Width of accessways are to be as follows:</p> <table border="1"> <thead> <tr> <th>Number of lots to be serviced</th> <th>Width of clear constructed accessway (m)</th> </tr> </thead> <tbody> <tr> <td>1 - 5</td> <td>3.5</td> </tr> <tr> <td>6 - 10</td> <td>5.0</td> </tr> <tr> <td>in excess of 10</td> <td>Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)</td> </tr> </tbody> </table> <p>Provision of services in rights of carriageway are as follows:</p> <table border="1"> <thead> <tr> <th>Number of lots to be serviced</th> <th>Additional width to be provided in Right of Carriageway (m)</th> </tr> </thead> <tbody> <tr> <td>Up to 3 lots</td> <td>0.5</td> </tr> <tr> <td>4 or more lots</td> <td>1.0</td> </tr> </tbody> </table>	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)	Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)	Up to 3 lots	0.5	4 or more lots	1.0		
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Up to 3 lots	0.5																
4 or more lots	1.0																
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	Complies	Yes														

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 subject site currently contains a dual occupancy which is a prohibited form of development

in the zone. The subdivision of this land which involves a variation of 62% to the development standard, would regularize a density and intensity that is not supported in this area.

The proposal does not comply with this objective.

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

Comment:

The subdivision would restrict all opportunity for new development to be consistent with the density and subdivision pattern of the area. This would result in unreasonable amenity impact and would restrict opportunity for landscape corridors.

The proposal does not comply 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 proposed lots would not have sufficient areas for landscaping as future development could not match the landscaped character formed by lots to the north (rear yards with large landscaped areas). The proposal would also result in regularising two areas of private open space (for each dwelling) when there is a reasonable expectation for one area of private open space given the size of the lot in relation to the prescribed minimum lot size.

The proposal does not comply with this objective.

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

Comment:

The proposed lots restrict opportunity for future development to provide an open corridor to the rear of the site. This means that sunlight could not be maximised to the private open space of dwellings to the south.

The proposal does not comply with this objective.

- *To maximise the use of existing infrastructure.*

Comment:

The proposal would use existing infrastructure.

The proposal complies with this objective.

- *To protect the amenity of adjoining properties.*

Comment:

The proposed reduction of built form will slightly reduce the existing amenity impact for neighbours. However, the regularisation of two new lots with a significant variation to the lot size development standard, reduces any reasonable opportunity to protect the amenity of neighbours

in relation to future development.

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

Comment:

The proposal does not result in any change that could cause unreasonable risk in terms of bushfires, land slip and flooding.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not 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.

CONCLUSION

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

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

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

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

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

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.1 Minimum Subdivision Lot Size has adequately

addressed and demonstrated that:

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case;
and

b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Conclusions on the Assessment of the Application

In the assessment of the application, it has been found that the the proposed subdivision would regularise a density that is not supported for this area.

The subdivision would restrict all opportunity for the site to be complementary to the character of sites to the north. As such, this is not an orderly development of the land.

Furthermore, the application which seeks to vary the development standard does not provide sufficient reasons as to why the standard is unreasonable or unnecessary and does not provide sufficient environmental planning grounds for such a variation. Although the new uses would be permissible (two dwelling houses), the lots would demonstrate a character that is inconsistent with the objectives of the R2 zone (requiring a low density character) and the Minimum Lot Size standard.

Therefore, the application is recommended for refusal.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/0501 for the Alterations and additions to a dwelling house and Torrens Title Subdivision on land at Lot 1 SP 57338,1 / 2 Beach Road, COLLAROY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone R2 Low Density Residential of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1 Minimum Subdivision Lot Size of the Warringah Local Environmental Plan 2011.
4. Council is not satisfied that:
 - 1) The applicant's written request under clause 4.6 of the Warringah Local Environmental Plan 2014 seeking to justify contravention to the development standard specified under of Clause 4.1 has adequately addressed and demonstrated that:
 - a) compliance with the standards is unreasonable or unnecessary in the circumstances of the case; and
 - b) there are sufficient environmental planning grounds to justify the contraventions.
 - 2) the proposed development will be in the public interest because it is consistent with the objectives of the standards and the objectives for development within the zone in which the development is proposed to be carried out.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1 Subdivision of the Warringah Development Control Plan.
6. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.