

24 March 2023

Planning Department  
Northern Beaches Council  
PO Box 82  
Manly NSW 1655

Dear Sir or Madam,

Re: Development Application – One-into-two lot Torrens title subdivision – 8 Walsh Street, North Narrabeen

I refer to letter dated 9 May 2023. Please find below a response to your items raised.

Council Comment

Minimum Allotment Size

As you are no doubt aware, the proposed allotments are deficient in area and do not meet the minimum allotment size specified under Clause 4.1 Minimum subdivision lot size of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

Based on the circumstances and the information provided in the application, Council sees no justifiable reason to vary this development standard. In particular, the undersized allotments cannot demonstrate compliance with the following objectives of the control:

*(a) to protect residential character and amenity by providing for subdivision where all resulting lots are consistent with the desired character of the locality, and the pattern, size and configuration of existing lots in the locality;*

*(c ) to provide for subdivision where all resulting lots are capable of providing for buildings that will not unacceptably impact on the natural environment or the amenity of neighbouring properties; and*

*(g) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*

Response: Please refer to amended DA plan – Annexure A

### Council Comment

#### Written Request to Vary Development Standard

The written request to vary the development standard for minimum allotment sizes, as required by Clause of PLEP 2014, does not contain in Council's view sufficient environmental planning grounds that justify the departure and fails to also demonstrate that compliance with this standard is both unnecessary and/or unreasonable under the circumstances.

The written report provides commentary on the "Five Way" principles established by the NSW Land and Environment Court (the Court) in *Wehbe v Pittwater Council [2007] NSW LEC 827* (Wehbe), focusing on the "First Way" principle. However, the arguments put forward would appear to be more consistent with the "Third Way" of Wehbe, which states: *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable*.

By way of example, on Page 14, the written report asserts that the proposed lots will achieve, and has been designed and demonstrated, to satisfy other development controls in regard to: building height; site coverage; landscaping; setbacks; provision of services; parking; access; private open space; and deep soil zones. It also further asserted on Page 15 that "strict compliance with the standard would not allow this suitable development and preclude a positive residential outcome for the site and area".

However, the application proposes no physical works, only subdivision, hence there is no way to confirm that these matters have been adequately satisfied and in turn, conclusively proven that compliance with the standard is either unnecessary and / or unreasonable.

In summary, the written report is not adequate to meet the provisions of Clause 4.6 of PLEP 2014, on two grounds. Firstly, the reasons to justify the variation are not presented in a cogent manner that is persuasive to the degree that a variation could be seriously considered. And secondly, there is not sufficient supporting information to verify the reasons put forward in the written request.

This is discussed in further detail below.

Response: Refer to amended variation request – Annexure B

### Council Comment

#### Insufficient Detail to Justify Variation

In the matter of *Parrott v Kiama Council [2004] NSWLEC 77* (Parrott), the Court held that a subdivision application should provide constraints on future buildings when the proposed allotments are smaller than usual. Or, specifically, provide detailed designs that demonstrate that

<p>the constraints of the proposed allotments can be met through specialised designs. This has now been established as a Court Planning Principle, which is relevant to this and any other application in NSW.</p> <p>Therefore, as the allotments proposed are undersized and submissions have been received from adjoining properties, it is necessary that the proposal be supported by full details of any future development on the site.</p>
<p><u>Response:</u> Refer to Annexure A – Amended DA plans showing building envelopes, compliant with DCP standards</p>
<p><u>Council Comment</u></p> <p>Minimum Building Area</p> <p>Insufficient information has been provided to demonstrate compliance with Part B2.2 Subdivision - Low Density Residential Areas of the Pittwater 21 Development Control Plan (P21 DCP).</p> <p>Specifically, a minimum area for building of 175m<sup>2</sup>, is to be shown on any subdivision plan.</p> <p>It should also be noted that any structures on the land (including the existing dwelling) must demonstrate compliance with this control and any other principal built form control of the P21 DCP that would apply to new residential development. Such information would form the basis of the issues discussed in the above paragraph.</p>
<p><u>Response:</u> This is provided- Refer to DA plans</p>
<p><u>Council Comment</u></p> <p>Existing Structures</p> <p>The proposed boundary between Proposed Lot 1 and Lot 2 will pass through the existing structures on the site, specifically a swimming pool and associated pergola / awning. Consistent with the issues identified in Parrott and to ensure the orderly future development of the land, the demolition of these structures will need to be sought in conjunction with the proposed subdivision.</p>
<p><u>Response:</u> The swimming pool is shown to be removed and all other boundary setbacks can be</p>

<p>complied with.</p>
<p>Landscape Officer Comments</p> <p>Council's Landscape Officer has reviewed the application and does not support the application. Their comments are provided below:</p> <p><i>"Landscape Referral have assessed the subdivision proposal against Pittwater DCP controls C4.7 Subdivision - Amenity and Design, and C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots.</i></p> <p><i>The proposed subdivision submits limited information for Landscape Referral to provide assessment of the landscape setting/outcome. The property does not contain any prescribed trees however the existing street tree is able to be retained, and as such C4.8 is satisfied.</i></p> <p><i>Without an indicative building envelope area, as required to be submitted with Subdivision applications, the capability to comply with C4.7 is unknown in terms of the provision of landscaping and/or recreation space for each proposed lot. Furthermore, the capability to satisfy Pittwater DCP landscape controls C1.1 Landscaping and D11.10 Landscaped Area - General, with respect to the required 50% landscaped area for each proposed lot, is unknown."</i></p> <p>In summary, the application is substantially deficient in the justifications necessary to vary Council's development standard.</p>
<p><u>Response:</u> Refer to amended DA plans, SOEE and Variation request . A landscape plan can be provided once application is made for a new dwelling on proposed Lot 2.</p>

If future communication should be made through our office, on behalf of the applicant. We look forward to hearing from you.

Yours faithfully,

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