

STATEMENT OF ENVIRONMENTAL EFFECTS

**FOR PROPOSED TORRENS TITLE SUBDIVISION OF ONE LOT INTO
TWO LOTS AND CONSTRUCTION OF A NEW CAR STAND AREA,
DRIVEWAY AND CROSSING**

LOCATED AT

45 OXFORD FALLS ROAD, BEACON HILL

FOR

JIRI AND MARCELA ALBRECHT

**Prepared
July 2019**

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1.0 Introduction

This Statement of Environmental Effects accompanies details prepared by Michal Korecky, Drawing No. 18080, dated 22 May 2019 for the Torrens Title subdivision of one lot into two lots and construction of a new car stand area with driveway and crossing on land at **No. 45 Oxford Falls Road, Beacon Hill**.

This Statement describes the subject site and the surrounding area, together with the relevant planning controls and policies relating to the site and the type of development proposed. As a result of this assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

In preparation of this document, consideration has been given to the following:

- *The Environmental Planning and Assessment Act, 1979 as amended*
- *The Environmental Planning and Assessment Regulation 2000*
- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Warringah Local Environmental Plan 2011*
- *Warringah Development Control Plan*

2.0 Property Description

The subject allotment is described as **45 Oxford Falls Road, Beacon Hill** being Lot 1 within Deposited Plan 206629 and is zoned R2 Low Density Residential within the provisions of the Warringah Local Environmental Plan 2011.

The site is noted as Land Slip Risk Area A & B and involved excavation work to provide for a new car stand area adjacent to the Oxford fall Road frontage. Accordingly, a Geotechnical Investigation has been prepared by White Geotechnical Group, Reference No. J2011A, dated 22 July 2019, and accompanies this submission. This will be discussed in further detail within this report.

The site is noted as Bushfire Prone Land. A Bushfire Risk Assessment has been prepared by Planning or Bushfire Protection, Reference No. 1299, dated 9 July 2019 and accompanies this submission.

The site is identified on Council's Stormwater Map and is within 2m of Council's stormwater pits and conduits. The proposal is considered in the Overland Flow Assessment prepared by Stellen Civil Engineering, dated 30 April 2019 and this will be discussed in further detail within this report.

The site is not noted as being affected by any other hazards.

3.0 Site Description

The subject site is located on the southern side of Oxford Falls Road. The lot is rectangular in shape, with a width of 17.34m and the western and eastern side boundaries measuring 64.975m and 64.96m respectively. The site area is 1126m².

The site has a fall of approximately 12.6m to the front, northern boundary.

Vehicular access is currently available to the site via a right of carriageway from Dareen Street to an existing dwelling with an attached and detached garage.

The details of the subject site are indicated on the survey plan prepared by Detailed Surveys, Reference No. 087/17, dated 30 October 2017, which accompanies the DA submission.



Fig 1: Location of Subject Site
(Source: Google Maps)



Fig 2: View of subject site, looking south from Oxford Falls Road/Iris Street intersection



Fig 3: View of subject site and location of proposed car stand area, looking south-west from Oxford Falls Road/Iris Street intersection



Fig 4: View of neighbouring properties to the east, including similar car stand at No 43 Oxford Falls Road, looking south



Fig 5: View of streetscape to the east of the site, looking south-east

4.0 The Surrounding Environment

The general vicinity of the site is characterised by a mix of residential dwellings of generally one or two storeys and of a variety of architectural styles. The varying age of development in the area has resulted in a mix of materials and finishes, with the development in the area generally presenting a consistent setback to the public domain.

The surrounding properties comprise a range of original style dwellings with an emergence of modern dwellings and additions. Surrounding development comprises a mix of single and two storey dwellings.

The dwellings within this area are characterised by a mix of gentle and steeply sloping topography. Local views are enjoyed by dwellings along Oxford Falls Road.



Fig 6: Aerial view of locality
(Source: Google Maps)

5.0 Proposed Development

The proposal seeks consent for the Torrens Title subdivision of one lot into two lots & and construction of a new car stand area, driveway and crossing.

The proposed new car stand area, driveway and crossing is to be constructed within the north-eastern portion of the site, with access to be provided from Oxford Falls Road. Pedestrian access stairs from the street and car stand area to the dwelling are also proposed.

A 900mm stormwater easement is to be constructed along the eastern side of the proposed new lot.

The proposed subdivision of Lot 1 will result in allotments which have been defined as Proposed Lots 1 and 2, with the following indices:

Site Area (Lot 1):	684.4m ² (existing right of carriage way from Daren St to be utilised)
Site Area (Lot 2):	442.2m ² (access via Oxford Falls Rd)

Proposed Lot 2 will eventually contain a new dwelling, which will form part of future development application. A building envelope has been indicated on the plans.

6.0 Zoning and Development Controls

6.1 State Environmental Planning Policy No. 55 – Remediation of Land

SEPP 55 – Remediation of Land and in particular Clause 7(1)(a) suggests that a consent authority must not grant consent to the carrying out of any development on land unless it has considered whether the land is contaminated.

Given the history of residential use of the land, the site is not considered to be subject to contamination and further investigation is not required at this stage.

6.2 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The SEPP commenced on 25 August 2017 and replaced Clause 5.9 of Warringah Local Environmental Plan 2011.

The aims of the SEPP are detailed in Clause 3 and note:

The aims of this Policy are:

- (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

The proposed subdivision will not see the removal of any significant trees or vegetation.

The future development of the new northern allotment will see the removal of some of the existing trees, which are not considered to be significant and can be supplemented with replacement planting in the future.

It is envisaged that the detailed assessment of the future development impact resulting from the future dwelling will be carried out when a development application is lodged for the new dwelling.

Each site will retain suitable area for further supplementary planting to address the loss of any trees affected by the works.

6.3 Warringah Local Environmental Plan 2011

Under the provisions of the WLEP 2011 the development of and use of the land for residential purposes is consistent with the objectives of the R2 Low Density Residential Zone, which are noted as:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provides 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.*



Fig 7: Zoning map extract (Source: WLEP 2011)

It is considered that the proposed Torrens Title subdivision of one lot into two is consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the subdivision pattern within the locality.
- The proposed lot size and potential development area respects the scale and form of other new development in the vicinity and therefore complements the locality.
- The proposal maximises the landscaped area outside of the future building platforms whilst providing safe and functional vehicular access and recreational areas.
- The setbacks of the future development platforms are compatible with the existing surrounding development.
- The future developable areas will not have an adverse impact on the long distance views for the neighbouring properties.

Clause 2.6 – Subdivision – Consent requirements

The requirement of WLEP 2011 requires the prior consent of Council for any subdivision. Accordingly, this application seeks consent in accordance with this Clause.

Clause 4.1 – Minimum subdivision lot size

In accordance with the Lot Size Map, the minimum allotment size in this locality is 600m². The proposed lots provide the following areas:

Site Area (Lot 1):	684.4m ²
Site Area (Lot 2):	442.2m ²

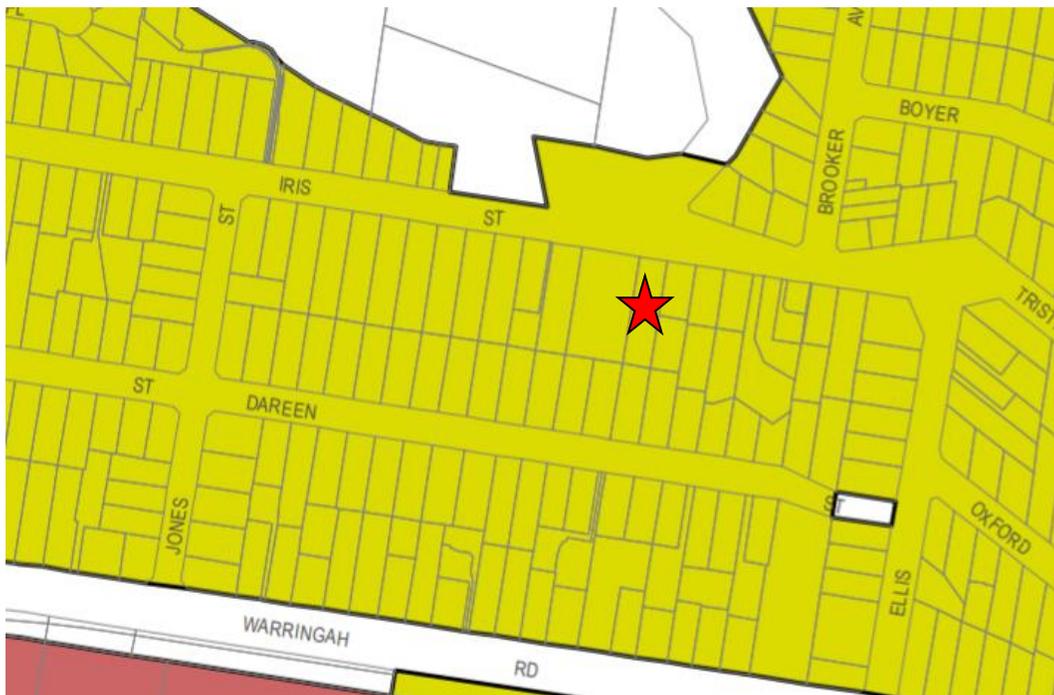


Fig 8: Lot size map (Source: WLEP 2011)

The proposed size of Lot 2 will present a noncompliance with the required minimum lot size. Accordingly, the proposal is accompanied by a submission pursuant to Clause 4.6 in support of the proposed variation.

Clause 6.2 – Earthworks

The application seeks consent for excavation to provide for a car stand area at the Oxford falls Road frontage, together with a driveway and crossing. The infrastructure works to accommodate for the car stand area, driveway and crossing and stormwater easement drainage works will not necessitate substantial disturbance to the existing landform.

Due to the sloping nature of the site, a Geotechnical Investigation has been prepared by White Geotechnical Group, Reference No. J2011A, dated 22 July 2019, and accompanies this submission.

All works will be carried out under the supervision of the Consulting Structural & Geotechnical Engineers.

Clause 6.4 – Development on Sloping Land

The site is noted as being within Landslip Area A and B. The proposal seeks to provide for the Torrens Title subdivision of the existing allotment into two, together with the construction of a car stand area, driveway and crossing and stormwater easement drainage works. Accordingly, a Geotechnical Investigation has been prepared by White Geotechnical Group, Reference No. J2011A, dated 22 July 2019, and accompanies this submission. The report provides recommendations in relation to geotechnical inspections to be observed during the construction works. The proposal therefore satisfies the provisions of this clause.

It is submitted that the proposed subdivision of one lot into two would comply with the WLEP 2011 subdivision controls.

6.4 Warringah Development Control Plan

The primary built form controls relating to the setback height, site coverage etc. for built structures will be further assessed in relation to the future development applications for new buildings on the land.

The relevant numerical and performance based controls under WDCP are discussed below.

Standard	Required	Compliance/ Proposed
B5 – Side Boundary setback	<p>Objectives</p> <ul style="list-style-type: none"> • To provide opportunities for deep soil landscape areas • To ensure that development does not become visually dominant • To ensure that the scale and bulk of buildings is minimised • To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained • To provide reasonable sharing of views to and from public and private properties 	<p>Development is subject to a minimum side setback of 900mm. The proposed new car stand area and driveway is well set back from the western side boundary of the site, and stands 900mm from the eastern side boundary and therefore complies with this control.</p>
B7 – Front Boundary setback	<p>Objectives</p> <ul style="list-style-type: none"> • To create a sense of openness • To maintain the visual continuity and pattern of buildings and landscape elements • To protect and enhance the visual quality of streetscapes and public spaces • To achieve reasonable view sharing 	<p>The control requires a 6.5m front setback.</p> <p>The proposed new car stand area will stand a minimum of 2.186m from the front boundary.</p> <p>Due to the steeply sloping topography of the site, there is no alternative location available.</p> <p>The proposed excavated car stand area maintains a modest single storey scale to Oxford Falls Road, which is in keeping with the bulk and scale of surrounding development.</p> <p>The proposed new works will not result in any unreasonable impacts for neighbouring</p>

		<p>properties in terms of view loss, amenity impacts or overshadowing. Accordingly, the siting of the proposed car stand area is considered worthy of support on merit.</p> <p>Due to the sloping topography of the site, it is not uncommon to have parking structures located within the front setback. The car stand area in the adjoining property at No. 43 Oxford Falls Road comprises a similar form and location within the front setback.</p> <p>The proposed car stand area maintains a sense of openness, and the modest scale and low profile roof form will ensure that the visual impact of the structure is minimised. The proposed car stand area will not result in any loss of views for neighbouring properties.</p> <p>Notwithstanding the variation to the front setback control, the siting of the car stand area is in keeping with the desired outcomes of this clause and the proposal is worthy of support on merit.</p>
<p>B9 – Rear Boundary setback</p>	<p>Objectives</p> <ul style="list-style-type: none"> • To ensure opportunities for deep soil landscape areas are maintained • To create a sense of openness in rear yards • To preserve the amenity of adjacent land, particularly relating to privacy between buildings, rear gardens and landscape elements • To provide opportunities to maintain privacy between dwellings 	<p>Development is subject to a minimum rear setback of 6m.</p> <p>The proposed new car stand is sited within the front boundary area and is therefore not subject to the rear setback control.</p> <p>Due to the proposed retention of an existing at the rear, (northern) elevation of the</p>

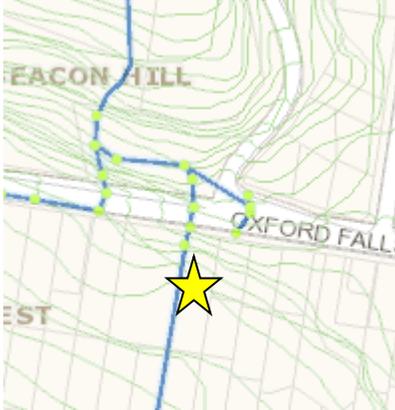
		<p>existing dwelling, the new dividing boundary will stand 953mm from the sunroom. In order to maintain future privacy between the dwellings, the north facing window to the sunroom can be provided with a privacy screen or opaque glazing as required by Council.</p> <p>The proposed building envelope will stand from 5514m from the new common boundary. A future dwelling can be designed to respect a 6m setback to the new dividing boundary, in accordance with Council’s setback requirements.</p>
<p>C1 – Subdivision</p>	<p><u>Requirements</u></p> <p>1. R2 Low Density Residential zone requirements:</p> <p>Proposed new allotments:</p> <p>a) Min width: 13m b) Min depth: 27 m and c) Min building area: 150m²</p>	<p><u>Lot 1</u> Width – 17.34m Depth – 38.975m Building area – N/A (existing building maintained)</p> <p><u>Lot 2</u> Width – 17.34m Depth – 26.0m Building area – >150m²</p> <p>The proposal generally complies with the subdivision requirements, with the exception of depth of proposed Lot 2, which presents a minor variation of 1.0m from the control.</p> <p>A greater depth is proposed for Lot 1 in order to retain the existing building form and a compliant rear setback for the existing dwelling. The proposed Lot 2 is capable of accommodating a dwelling which readily complies with</p>

	<p><u>Access</u></p> <p>2. 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>Council's controls. Accordingly, the minor variation to the depth control is considered acceptable on merit.</p> <p>The existing driveway (ROW) access from Dareen Street will be retained for access to Lot 1. Access to Lot 2 will be provided via a new driveway and crossing from Oxford Falls Road to a proposed new car stand area.</p> <p>The new access driveway to Lot 2 will be compliant with Council's controls.</p> <p>No passing bays are required as two separate access ways will be provided.</p>
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	<p>Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.</p>	<p>N/A – The proposed access driveway to Lot 1 will be retained and a new separate access driveway and crossing will provide access to Lot 2.</p>
<p>Width of accessways* Number of lots to be serviced/ Width of clear constructed accessway (m)*</p> <p>1-5 lots/3.5m</p> <p>6-10 lots/5.0m</p> <p>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)</p>		
<p>*Notes to Table: The accessway width is exclusive of any area for the provision of services to the lots. Clear widths exclude fencing and other obstructions. As the widths specified are for straights, any widening should be exclusive of the widening for curves. The widening for curves should suit the minimum swept path of vehicles in accordance with Australian / New Zealand Standards (at the time of adoption AS/NZS 2890.1:2004 applied).</p>		
<p>Table: Provision of services in rights of carriageway Number of lots to be serviced/ Additional width to be provided in Right of Carriageway (m)*</p> <p>Up to 3 lots/0.5m</p> <p>4 or more lots/1.0m</p>		
<p>All existing and new roads are to be designed in accordance with Council's Policy requirements:</p>		

	<p><u>Design and construction</u></p> <p>3. 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. 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>Drainage</u></p> <p>4. 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.</p> <p><u>Restrictions</u></p> <p>5. 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.</p>	<p>Noted – will be considered in the any future applications for dwellings.</p> <p>Stormwater from the proposed allotments will be directed to the street gutter in Oxford Falls Road via the proposed new 900mm Stormwater Easement to be located adjacent to the eastern side boundary of Lot 2. Any future applications for construction of a dwelling on the proposed Lot 2 will provide detailed stormwater drainage plans.</p> <p>Noted</p>
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	<p>c) the number of vehicle crossings in a street;</p> <p>d) traffic, pedestrian and cyclist conflict;</p> <p>e) interference with public transport facilities; and</p> <p>f) the loss of “on street” kerbside parking.</p> <p>Vehicular crossing to be provided in accordance with Council’s Vehicle Crossing Policy</p>	<p>accordance with Council’s controls. The existing access to the site will be retained for access to Lot 1. The works will minimise the impact on on-street parking.</p>
<p>C3 – Parking Facilities</p>	<p>Objectives</p> <ul style="list-style-type: none"> • To provide adequate off street carparking • To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public space • To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces. 	<p>The proposal provides for the construction of a new car stand area within the north-eastern portion of proposed Lot 2. The car stand area will provide space for two car spaces and its modest size and open design will not dominate the streetscape.</p>
<p>C4 – Stormwater</p>	<p>Objectives</p> <ul style="list-style-type: none"> • To ensure the appropriate management of stormwater. • To minimise the quantity of stormwater run-off. • To incorporate Water Sensitive Urban Design techniques and On-Site Stormwater Detention (OSD) Technical Specification into all new developments. • To ensure the peak discharge rate of stormwater flow from new development is no greater than the Permitted Site Discharge (PSD). <p>Hydraulic Design to be provided in accordance with Council’s Stormwater Drainage Design Guidelines for Minor Developments and Minor Works Specification</p>	<p>Stormwater from the proposed allotments will be directed to the street gutter in Oxford Falls Road through proposed new 900mm Stormwater easement along the eastern side of Lot 2.</p> <p>Any future applications for construction of a dwelling on the proposed Lot 2 will provide stormwater drainage plans.</p>

<p>C6 – Building over or adjacent to Constructed Council Drainage Easements</p>	<p>Objectives</p> <ul style="list-style-type: none"> To ensure efficient construction, replacement, maintenance or access for emergency purposes to constructed public drainage systems located within private property. 	<p>The site adjoins a stormwater conduit to the west.</p> <p>The proposal is accompanied by an Overland Flow Assessment prepared by Stellen Civil Engineering, dated 30 April 2019. Subject to compliance with the recommendations within this report, the proposal complies with the provisions of this clause.</p>
<p>E1 – Private Property Tree Management</p>	<p>Arboricultural report to be provided to support development where impacts to trees are presented</p>	<p>The proposed subdivision will not require the removal of any trees or vegetation.</p> <p>Any future development application for the construction of a dwelling in Lot 2 would require the consideration of tree removal.</p>
<p>E2 – Prescribed Vegetation</p>	<p>Not identified on map</p>	<p>N/A</p>
<p>E3 – Threatened species, populations, ecological communities</p>	<p>Not identified on map</p>	<p>N/A</p>
<p>E4 – Wildlife Corridors</p>	<p>Not identified on map</p>	<p>N/A</p>
<p>E5 – Native Vegetation</p>	<p>Identified on map</p>	<p>N/A</p>
<p>E6 – Retaining unique environmental features</p>	<p>Not identified on map</p>	<p>No significant features within site.</p>
<p>E7 – Development on land adjoining public open space</p>	<p>Not identified on map</p>	<p>N/A</p>
<p>E8 – Waterways and Riparian Lands</p>	<p>Not identified on map</p>	<p>N/A</p>
<p>E10 – Landslip Risk</p>	<p>Identified on map as Area A & Area B.</p>	<p>Accordingly, a Geotechnical Investigation has been prepared by White Geotechnical Group,</p>

	Nature of works to excavate >2m requires the submission of a Geotechnical Hazard Assessment.	Reference No. J2011A, dated 22 July 2019, and accompanies this submission. The report provides recommendations in relation to geotechnical inspections to be observed during the construction works. The proposal therefore satisfies the provisions of this clause.
E11 – Flood Prone Land	Not identified on map	N/A

7.0 Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979

7.1 The provisions of any environmental planning instrument

The proposal is subject to the provisions of the Warringah Local Environmental Plan 2011 and the relevant supporting Council policies. It is considered that the provisions of this environmental planning instrument have been satisfactorily addressed within this report and that the proposal achieves compliance with its provisions.

There are no other environmental planning instruments applying to the site.

7.2 Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

There are no draft instruments applying to the land.

7.3 Any development control plan

The development has been designed to comply with the requirements of Warringah Development Control Plan 2011.

The application has been prepared having regard to the requirements of Section B, Section C and Section D of the Warringah DCP.

It is considered that the proposed design respects the aims and objectives of the DCP however we note that the Environmental Planning and Assessment Amendment Act 2012 No 93 (Amendment Act) which received assent on 21 November 2012 commenced on 1 March 2013.

Key amongst the amendments are requirements to interpret DCPs flexibly and to allow reasonable alternative solutions to achieve the objectives of DCP standards.

The new section 3.42 provides that the 'principal purpose' of DCPs is to 'provide guidance' on:-

- giving effect to the aims of any applicable environmental planning instrument
- facilitating permissible development
- achieving the objectives of the relevant land zones.

The key amendment is the insertion of section 4.15(3A) which:

- prevents the consent authority requiring more onerous standards than a DCP provides,
- requires the consent authority to be 'flexible' and allow 'reasonable alternative solutions' in applying DCP provisions with which a development application does not comply,
- limits the consent authority's consideration of the DCP to the development application (preventing consideration of previous or future applications of the DCP).

We request that Council applies considered flexibility where the application seeks variations to numerical development controls in the DCP as justified in this report. In particular we consider that the variation to the rear setback for Lot 1 and the front boundary setback for the car stand area for Lot 2 is a reasonable alternative solution to compliance where the site conditions results in a challenge to designing for new development which fully respects front boundary setback control.

It is considered that the proposed design respects the desired character objectives of the DCP in that it reinforces the existing residential character of the area and is compatible with the existing uses in the vicinity.

7.4 Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

No matters of relevance are raised in regard to the proposed development.

7.5 The regulations (to the extent that they prescribe matters for the purposes of this paragraph),

No matters of relevance are raised in regard to the proposed development.

7.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

It is considered that the proposal, which seeks consent for the proposed Torrens Title subdivision of one lot into two lots and construction of a stormwater easement, new car stand area, driveway and crossing, will not unreasonably impact upon the amenity of adjoining properties or upon the character of the surrounding area. It is considered that the resultant development is compatible with and will complement the residential character of the area.

The proposal is considered to be well designed having regard to the relevant provisions of the Council's WLEP 2011.

7.7 The suitability of the site for the development

The subject land is currently zoned R2 Low Density Residential under the Warringah Local Environmental Plan 2011 and is considered suitable for the proposed development.

7.8 Submissions made in accordance with this Act or the regulations

This is a matter for Council in the consideration of this proposal.

7.9 The public interest

The proposal will not impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered to be within the public interest.

8.0 Conclusion

The principal objective of this development is to provide for the proposed Torrens Title subdivision of one lot into two lots and construction of a new car stand area, driveway and crossing, which respects and complements the site's location.

It is considered that the proposed works satisfy the stated objectives of Council's Development Controls. By maintaining our neighbours amenity and by complementing the existing style and character of the surrounding locality, the stated objectives have been satisfied.

As the proposed development will not have any significant impact on the environment, scenic quality of the area or the amenity of the adjoining allotments, the issue of Development Consent under the delegation of Council is requested.

VAUGHAN MILLIGAN

Town Planner

Grad. Dip. Urban and Regional Planning (UNE)

**APPENDIX:
CLAUSE 4.6 SUBMISSION – MINIMUM LOT SIZE**

**WRITTEN SUBMISSION PURSUANT TO CLAUSE 4.6 OF
WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

45 OXFORD FALLS ROAD, BEACON HILL

**FOR THE PROPOSED TORRENS TITLE SUBDIVISION OF ONE LOT INTO TWO LOTS AND
CONSTRUCTION OF A NEW CAR STAND AREA, DRIVEWAY AND CROSSING**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MINIMUM SUBDIVISION LOT SIZE AS
DETAILED IN CLAUSE 4.1 OF THE WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

For: Proposed Torrens Title subdivision of one lot into two lots, and construction of a new car stand area, driveway and crossing
At: 45 Oxford Falls Road, Beacon Hill
Owner: Jiri and Marcela Albrecht
Applicant: Jiri and Marcela Albrecht c/- Vaughan Milligan Development Consulting

1.0 Introduction

This written submission is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011. In this regard it is requested Council support a variation with respect to compliance with the minimum subdivision lot size as described in Clause 4.1 of the Warringah Local Environmental Plan 2011 (WLEP 2011).

2.0 Background

Clause 4.1 restricts the minimum subdivision lot size in this locality to 600m² and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The resultant allotments which have been defined as Proposed Lots 1 and 2, will have the following indices:

Site Area (Lot 1):	684.4m ²
Site Area (Lot 2):	442.2m ²

Lot 1 complies with the control, however the proposed Lot 2 presents a variation of 157.82m² or 26.8% from the standard.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

3.0 Purpose of Clause 4.6

The Warringah Local Environmental Plan 2011 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the retention of the existing dwelling and create the opportunity to construct a new dwelling with a car stand area and access from Oxford Falls Road through the subdivision of one lot into two lots, which is consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

- 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.*

As sought by the zone objectives, the proposal will provide for proposed Torrens Title subdivision of one lot into two lots, and construction of a new car stand area, driveway and crossing, with the proposal being sensitive to the location and the topography of the locality.

The two new lots will have separate pedestrian and vehicular access, with Lot 1 to retain existing access via a driveway from Dareen Street and the new Lot 2 to be accessible via a new driveway from Oxford Falls Road.

Despite the non-compliance with the minimum lot size control, the proposed subdivision will provide lots that are capable of accommodating dwellings that will provide suitable amenity for occupants and neighbours, and therefore compliance with the maximum height standard is unnecessary and unreasonable in the circumstances of the case.

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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.*

This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11* & *Samadi v Council of the City of Sydney [2011] NSWLEC 1199*.

Paragraph 27 of the Samadi judgement states:

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The site is located in the R2 Low Density Residential Zone. The objectives of the R2 zone are noted as:

- *To provide for the housing needs of the community within a R2 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.*

It is considered that notwithstanding the noncompliance of the proposed Lot 2 with the lot size control, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the R2 Low Density zone for the following reasons:

- **To provide for the housing needs of the community within a R2 Low Density Residential environment.**

The R2 Low Density Residential Zone contemplates low density residential uses on the land. The proposed subdivision is consistent with the existing subdivision pattern in the locality as noted in Table 1 (over). The proposal is therefore considered to be in keeping with the residential character of the locality.

Table 1: Size of existing lots in the immediate locality

Address	Lot	DP	Land Area (m ²)
301/0 Brooker Avenue BEACON HILL NSW 2100	301	599065	49.00
44A Oxford Falls Road BEACON HILL NSW 2100	3	862488	317.20
44B Oxford Falls Road BEACON HILL NSW 2100	2	862488	298.20
44C Oxford Falls Road BEACON HILL NSW 2100	1	862488	339.80
44D Oxford Falls Road BEACON HILL NSW 2100	4	862488	262.50
35 Oxford Falls Road BEACON HILL NSW 2100	1	850352	251.90
35 A Oxford Falls Road BEACON HILL NSW 2100	2	850352	382.60
8A Oxford Falls Road BEACON HILL NSW 2100	150	873000	393.40
210A Warringah Road BEACON HILL NSW 2100	202	871952	420.10
39 Tristram Road BEACON HILL NSW 2100	1	859147	444.40
39A Tristram Road BEACON HILL NSW 2100	2	859147	408.00
13 Tristram Road BEACON HILL NSW 2100	1	840371	830.90
13A Tristram Road BEACON HILL NSW 2100	2	840371	416.90
1B Tristram Road BEACON HILL NSW 2100	51	846606	323.70
1A Daines Parade BEACON HILL NSW 2100	2	871808	400.20
80A Iris Street BEACON HILL NSW 2100	31	1067494	279.20
80B Iris Street BEACON HILL NSW 2100	32	1067494	279.30
51A Iris Street FRENCHS FOREST NSW 2086	2	1018589	422.50
51 Iris Street FRENCHS FOREST NSW 2086	1	1018589	670.90
49 Iris Street FRENCHS FOREST NSW 2086	1	862415	380.60
49 A Iris Street FRENCHS FOREST NSW 2086	2	862415	709.50
11 Patanga Road FRENCHS FOREST NSW 2086	1	853565	327.90
92 Dareen Street FRENCHS FOREST NSW 2086	2	853565	271.50
90A Dareen Street FRENCHS FOREST NSW 2086	1	855917	380.10
90B Dareen Street FRENCHS FOREST NSW 2086	2	855917	380.80
89 Dareen Street FRENCHS FOREST NSW 2086	1	1070945	290.90
91 Dareen Street FRENCHS FOREST NSW 2086	2	1070945	291.10
14A Patanga Road FRENCHS FOREST NSW 2086	2	865016	256.20
14 Patanga Road FRENCHS FOREST NSW 2086	1	865016	380.60

16 Patanga Road FRENCHS FOREST NSW 2086	1	1206353	318.70
16A Patanga Road FRENCHS FOREST NSW 2086	2	1206353	319.20
20 Patanga Road FRENCHS FOREST NSW 2086	101	857954	337.70
31 Iris Street FRENCHS FOREST NSW 2086	100	857954	488.40
27 Iris Street FRENCHS FOREST NSW 2086	1	848217	383.00
27A Iris Street FRENCHS FOREST NSW 2086	2	848217	434.00
25 Iris Street FRENCHS FOREST NSW 2086	1	836660	433.00
19 Inverness Avenue FRENCHS FOREST NSW 2086	2	836660	475.10
1A Harmston Avenue FRENCHS FOREST NSW 2086	592	843492	349.70
36 Frenchs Forest Road East FRENCHS FOREST NSW 2086	591	843492	495.00
32A Frenchs Forest Road East FRENCHS FOREST NSW 2086	1	1065395	377.40
32 Frenchs Forest Road East FRENCHS FOREST NSW 2086	2	1065395	377.40
305A Warringah Road BEACON HILL NSW 2100	61	1031836	276.70
305B Warringah Road BEACON HILL NSW 2100	62	1031836	278.70
303A Warringah Road BEACON HILL NSW 2100	51	1031837	276.70
303B Warringah Road BEACON HILL NSW 2100	52	1031837	278.70

As discussed above, the proposed subdivision results in allotments which are in keeping with the size of existing lots in the locality. The proposed lots are consistent with the existing pattern of subdivision to the east along Oxford Falls Road.

The proposed Lot 1 can readily accommodate the existing dwelling, and the proposed Lot 2 can accommodate a future dwelling which complies with Council's controls, as noted by the indicative building envelope in the submitted Subdivision Plan (Sheet No. 1).

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

The development does not suggest any alternate land uses and this Objective is not directly relevant to the subject proposal.

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

The proposal provides for the Torrens Title subdivision of one lot into two lots and construction of a new car stand area, driveway and crossing, in a manner which will retain the single dwelling character of the immediate area.

This objective is achieved in that the proposal will not require any significant further site disturbance or excavation, with minimal alteration to the natural ground levels and through the retention of generous areas of soft landscaping, will maintain the balance between landscaping and built form.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.1 are articulated at Clause 4.1(1):

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

- (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,*
- (b) to provide for subdivision where all resulting lots are capable of providing for the construction of a building that is safe from hazards,*
- (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,*
- (d) to provide for subdivision that does not adversely affect the heritage significance of any heritage item or heritage conservation area,*
- (e) to provide for subdivision where all resulting lots can be provided with adequate and safe access and services,*
- (f) to maintain the existing function and character of rural areas and minimise fragmentation of rural land,*
- (g) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*

Comments

Despite the variation to the minimum lot size control, it is considered that the sites are capable of accommodating future development which will contribute to the housing stock in Beacon Hill whilst maintaining consistency with the density of the locality.

The proposed development will not result in any unreasonable impacts on adjoining properties.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unreasonable and unnecessary to require strict compliance with the development standard in this instance, as the proposal intends to provide for the Torrens Title subdivision of one lot into two lots, which maintains consistency with the subdivision pattern in the locality.

Clause 4.1 restricts the minimum subdivision lot size in this locality to 600m².

The resultant allotments which have been defined as Proposed Lots 1 and 2, will have the following indices:

Site Area (Lot 1):	684.4m ²
Site Area (Lot 2):	442.2m ²

The proposed non-compliance is consistent with the current lot size of existing surrounding development and for this reason, it is considered that compliance with the development standard is unreasonable and unnecessary in the circumstances of this case.

In the *Wehbe* judgment (*Wehbe v Pittwater Council [2007] NSWLEC 827*), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy.

These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: It is considered that the underlying purpose of the standard is relevant but the purpose is satisfied by the proposed design.

3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment: In this instance, it is considered that the underlying object of the standard would be thwarted by a strict application of the development standard for minimum lot size.

The proposed design is intended to be compatible with the subdivision pattern in the locality.

The proposed minor non-compliance with the lot size control does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Comment: It is not suggested that Council has abandoned its control, however there are a significant number of existing allotments in the immediate vicinity which have not observed the 600m² development standard.

5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the*

land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Comment: The development standard is applicable to and appropriate to the zone.

The proposed subdivision is consistent with the existing subdivision pattern of the adjoining lots to the east, and will therefore be in keeping with the residential character of the locality.

Given the proposed lot size is compatible with the existing subdivision pattern of its immediate neighbours and as the relevant LEP & DCP Objectives are satisfied, Council's support of the variation to the minimum lot size control is requested in this instance.

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for Torrens Title subdivision of one lot into two lots and construction of a new car stand area, driveway and crossing which will contribute to the housing stock in Beacon Hill whilst maintaining consistency with the density of the locality.

Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Council's controls in Clause 4.1 provide a minimum lot size of 600m².

Lot 1 complies with the control, however the proposed Lot 2 presents a variation of 157.8m² or 26.3% from the standard.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does **not** mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

Accordingly, when assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The proposed subdivision, which as discussed introduces an appropriate and compatible lot size within the locality, and which promotes the orderly & economic use of the land.
- The proposal is considered to promote good amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the neighbouring properties.
- The proposed lot configuration will allow for the retention of the existing dwelling, which is in good order and to require its demolition and replacement with a new structure would not constitute good ecologically sustainable development.

The above are the environmental planning grounds which are the circumstance which are particular to the development which merit a variation to the development standard.

7.0 Conclusion

This objection to the minimum lot size specified in Clause 4.1 of the Warringah LEP 2011 adequately demonstrates that the objectives of the standard will be met.

The submission demonstrates that the lots can be readily developed in a manner which is consistent with the surrounding pattern and can achieve the Objectives of the R2 Low Density Zone.

The density of the proposed subdivision is appropriate for the site and locality.

Strict compliance with the minimum lot size control would be unreasonable and unnecessary in the circumstances of this case.

Handwritten signature of Vaughan Milligan in black ink.

VAUGHAN MILLIGAN
Town Planner