

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1109
----------------------------	-------------

Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 17 DP 23118, 39 Starkey Street FORESTVILLE NSW 2087
Proposed Development:	Subdivision of one lot into three and alterations and additions to the existing development
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Hai Sun Tan Tsu-Hao Lin
Applicant:	Hao Design Pty Ltd

Application Lodged:	17/08/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	23/08/2023 to 06/09/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 132,000.00
---------------------------------	---------------

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the subdivision of one lot into three and alterations and additions to the existing development. Specifically, the proposal seeks consent for Community Title subdivision of the land from one (1) lot into two (2) residential lots, and one (1) utility lot. The existing principal dwelling and detached secondary dwelling would become principle dwellings on their own allotments, with the current secondary dwelling changed from a secondary dwelling to a dwelling house. Alterations and additional to the existing developed on the site is proposed to accommodate this, including:

- Augmented vehicle crossing to provide car parking within each of the proposed housing lots.
- Stormwater management upgrades.
- Alterations to existing car parking arrangements including new driveway, turning areas, and car handstands on each proposed lot.
- Demolition of nominated structures (including rear studio, concrete paths, carport).
- Enlarge the living room of the dwelling on proposed Lot 3.

Additional information was requested in relation to Clause 1.2 Aims of Plan and the zone objectives of the R2 Low Density Residential zone of the Warringah Local Environmental Plan 2011 (WLEP 2011), as well as in relation to Clause C1 Subdivision and Clause C3 Parking Facilities of the Warringah Development Control Plan (WDCP). Furthermore, additional information was requested in relation to internal referral responses from Council's Landscape team and Development Engineering team. Additional and amended information was received, which was able to alleviate issues raised by Council's referral teams. However, the additional and amended information was unable to resolve planning issues raised.

Additional information and amended plans did not require re-notification, in accordance with the Northern Beaches Community Participation Plan.

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 - 2.6 Subdivision - consent requirements

Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential

Warringah Local Environmental Plan 2011 - 4.1AA Minimum subdivision lot size for community title schemes

Warringah Development Control Plan - A.5 Objectives

Warringah Development Control Plan - B9 Rear Boundary Setbacks

Warringah Development Control Plan - C1 Subdivision

SITE DESCRIPTION

Property Description:	Lot 17 DP 23118 , 39 Starkey Street FORESTVILLE NSW 2087
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Starkey Street.</p> <p>The site is regular in shape with a frontage of 28.04m along Starkey Street and a depth of 33.53m. The site has a surveyed area of 939.7sqm.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house and detached secondary dwelling, as well as some outbuildings, including two studios and two sheds.</p> <p>The site slopes gently from the north down towards the south, with a fall of approximately 2m across the site.</p> <p>The site contains lawn areas, garden beds, vegetation and trees. There are no details of threatened species on the subject site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential development, predominantly dwelling houses of varying size, age and style.</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:

Pre-lodgment Meeting No. **PLM2023/0027** was held on 23/03/2023 to discuss a similar subdivision proposal to the one put forward in the development application currently under assessment. The PLM Notes for this meeting concluded that "Council will not be supporting the proposed subdivision as it will create an undesirable precedent, is not in the public interest and is not orderly development of land. It is very strongly advised that a DA for this community title subdivision not be lodged." The proposal was altered slightly from that put forward in this PLM to that put forward in this development application, with the community lot configuration changed. The proposal has also been further altered during the assessment process in response to a Request for Further Information.

Application **Mod2020/0238** for Modification of Development Consent DA2020/0138 granted for alterations and additions to a dwelling house and secondary dwelling including a swimming pool was approved on 04/06/2020. This application was made under Section 4.55(1) of the EPA Act 1979 to correct a consent containing an error or mis-description, in this case correcting an administrative error with Condition 1 relating to the title of plans.

Application **DA2020/0138** for Alterations and additions to a dwelling house and secondary dwelling including a swimming pool was approved on 03/04/2020.

Application **DA2019/0358** for Alterations and additions to a dwelling house and secondary dwelling including a swimming pool was withdrawn on 01/07/2019.

Application **DA2014/0953** for Alterations and additions to an existing dwelling including the construction of a secondary dwelling pursuant to SEPP (Affordable Rental Housing) 2009 was approved on 20/10/2014.

Application **Mod2011/0097** for Modification of Development Consent DA2005/0373 granted for Demolition of all onsite structures, lot consolidation, construction of seven (7) new dwellings for older people or people with a disability, basement car parking and associated landscape works was approved on 16/06/2011.

Application **Mod2011/0082** for Modification of Development Consent DA2005/0373 granted for Demolition of all onsite structures, lot consolidation, construction of seven (7) new dwellings for older people or people with a disability, basement car parking and associated landscape works - Mod 2 was approved on 05/07/2011.

Application **ET2009/0001** for Housing for Aged and Disabled Comprising 7 Dwellings Basement Carparking Associated Landscaping and Demolition of Existing Buildings was approved on 24/06/2009. This application extended the lapsing date of DA2005/0373.

Application **DA2005/0373** for Housing for Aged and Disabled Comprising 7 Dwellings Basement Carparking Associated Landscaping and Demolition of Existing Buildings was approved on 26/09/2006. This consent was not acted on, but was extended and modified by other applications.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters could be addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Clause 1.2 Aims of Plan and the zone objectives of the R2 Low Density Residential zone of the Warringah Local Environmental Plan 2011 (WLEP 2011), as well as in relation to Clause C1 Subdivision and Clause C3 Parking Facilities of the Warringah Development Control Plan (WDCP). Furthermore, additional information was requested in relation to internal referral responses from Council's Landscape team and Development Engineering team.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter could be addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter could be addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent</p>

Section 4.15 Matters for Consideration	Comments
	authority to consider the provisions of the Building Code of Australia (BCA). This matter could be addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) 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>
Section 4.15 (1) (c) – the suitability of the site for the development	The subject site is considered unsuitable for the proposed development, as the proposal represents an overdevelopment of the site and is inconsistent with the established subdivision character of the surrounding area.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant planning controls and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 23/08/2023 to 06/09/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Ms Rose Mary Loughnane	108 Cook Street FORESTVILLE NSW 2087

The following issues / concerns were raised in the submission:

- **Potential for asbestos to be present in structures proposed for demolition**

The submission raised concerns that asbestos may be present in structures proposed for demolition.

Comment:

If approved, any development consent would contain conditions requiring that any asbestos material arising from the demolition process shall be removed, handled and disposed of in accordance with relevant standards in order to protect the environment and human health.

This issue **does not** form a reason for refusal.

- **Stormwater**

The submission raised concerns that previous rain events had resulted in significant flows of water over an adjoining property to the south-east (108 Cook Street) and requested that the proposal have sufficient drainage / stormwater management.

Comment:

The proposal has been reviewed by Council's Development Engineering team, including with regard to stormwater management. Initially, this team raised issues with the proposal, and was unable to support the proposed development. These issues were put to the applicant in a Request for Further Information letter, and subsequently addressed. Following the provision of amended stormwater management plans, the proposal has been supported by Development Engineering, subject to recommended conditions of consent.

This issue **does not** form a reason for refusal.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is assessed by Landscape Referral against Warringah Development Control Plan 2011 (WLEP), and the following Warringah Development Control Plan 2011 (WDCP) controls (but not limited to): C1 Subdivision; D1 Landscaped Open Space and Bushland Setting; and E1 Preservation of Trees or Bushland Vegetation.</p> <p>The development application seeks consent for Community Title Land subdivision of the land from; one lot into two housing lots (lot 2 and lot 3), and one community lot (lot 1); associated subdivision works including vehicle access works and stormwater works; and alterations and additions to the existing dwelling.</p>

Internal Referral Body	Comments
	<p>Amended plans and reports are submitted to address the Landscape Referral concerns raised, including amended Landscape Plans and Arboricultural Impact Assessment. Landscape Referral raise no concerns with the amended Landscape Plan and the recommendations of the amended Arboricultural Impact Assessment, and conditions shall be imposed should the application be approved.</p>
NECC (Development Engineering)	<p>The submitted stormwater plans require the following amendments:</p> <ol style="list-style-type: none"> 1. Modelling is to be undertaken in accordance with ARR2019 using up to date BOM rainfall data and ARR Data Hub parameters. 2. The proposed OSD's appear undersized given that the post-development run-off from the site must be limited to the pre-development run-off for the 20%, 5% and 1% AEP events assuming a 100% pervious pre-development catchment. 3. Maximum allowable catchment by-pass draining to Starkey Street is to be 20%. This is exceeded on submitted plans. 4. No concentrated flows are permitted onto neighbouring properties. 5. Provide emergency overland flow path from OSD facility to discharge point to cater for system blockage. All habitable levels are to be 300 mm and garage levels are to be 150 mm above the 1% AEP level assuming full pipe blockage. 6. Provide a detailed DRAINS model to Council for perusal showing all OSD systems as well as all internal stormwater pipes. 7. Lot 3 is to be assumed to be a minimum of 60% post development impervious for OSD calculation purposes. 8. Council will accept an underground on-site detention system with stormwater discharge draining through 110 Cook Street if a drainage easement benefitting 39 Starkey Street is obtained through 110 Cook Street. 9. Provide a Catchment Plan showing all impervious and pervious areas as well as any by-pass from the OSD systems. <p>Note: a 6 metre combined vehicle crossing will not be accepted. The vehicle crossing width needs to be amended to a maximum width of 4 metres. This can be conditioned upon the submission of satisfactory stormwater management plans.</p> <p>Engineering Comments 20.02.24</p> <p>Amended stormwater management plans have been provided. I have no objections to the proposed development subject to the inclusion of the recommended engineering conditions of consent.</p>
NECC (Water Management)	<p>Supported</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WM Policy); and • Relevant LEP and DCP clauses <p>The proposal includes demolition, construction, and subdivision. The nature of the proposal triggers Table 5 – General Stormwater Quality Requirements of the Northern Beaches Council Water Management for Development Policy.</p>

Internal Referral Body	Comments
	Additional information about the stormwater management has been provided. The proposed treatment chain is satisfactory. On assessment, no objections regarding water quality.
Waste Officer	Waste Management Assessment Supported, subject to conditions

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations would be included within a development consent, if it were to be issued.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Housing) 2021

State Environmental Planning Policy (Housing) 2021 (SEPP Housing) Clause 51 establishes the following:

Development consent must not be granted for the subdivision of a lot on which development has been carried out under this Part.

A secondary dwelling has been constructed on the subject site (approved by DA2014/0953). Whilst the application includes the proposed change of use of the secondary dwelling to a dwelling house, the subject site has nonetheless had "development for the purposes of a secondary dwelling" carried out on it. Development for the purposes of a secondary dwelling is defined within *SEPP Housing* Clause 49 as follows

development for the purposes of a secondary dwelling includes the following—

- (a) the erection of, or alterations or additions to—*
 - (i) a secondary dwelling, or*
 - (ii) an ancillary structure within the meaning of Schedule 1,*
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.*

Therefore, development consent for subdivision must not be granted, as per the requirement stipulated

by Clause 51.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 who raised no objections, subject to conditions that would be included within a development consent, if it were to be issued.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
4.1AA Minimum subdivision lot size for community title schemes	No minimum lot size for R2 zone	Proposed Lot 1: 32.4sqm (Community Lot) Proposed Lot 2:	-	Yes

		451.7sqm Propose Lot 3: 451.7sqm		
Height of Buildings:	8.5m	4.9m (existing primary dwelling)* 4.7m (existing secondary dwelling)*	-	Yes

* The existing primary dwelling and secondary dwelling structures are proposed to be retained, with alterations and additions to these structures included in the proposal. The existing structures and proposed alterations and additions are all under the 8.5m height of buildings development standard.

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	No
4.1 Minimum subdivision lot size	N/A
4.1AA Minimum subdivision lot size for community title schemes	N/A
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

2.6 Subdivision - consent requirements

This Clause requires the following:

(2) Development consent must not be granted for the subdivision of land on which a secondary dwelling is situated if the subdivision would result in the principal dwelling and the secondary dwelling being situated on separate lots, unless the resulting lots are not less than the minimum size shown on the Lot SizeMap in relation to that land.

The proposal includes subdivision that will result in the principal dwelling and the secondary dwelling at the subject site being situated on separate lots. Therefore, this control is applicable.

The minimum size shown on the Lot SizeMap in relation to the subject site is 600sqm.

The resulting residential lots that will be created (proposed Lot 2 and Lot 3) will both be 451.7sqm, which is 24.7% smaller than the required lot size.

As the subdivision will result in a principal dwelling and secondary dwelling being situated on separate lots which are less than the 600sqm minimum lot size, development consent must not be granted, as per the requirement stipulated by Clause 2.6(2).

Zone R2 Low Density Residential

The proposal is assessed against the R2 Low Density Residential zone objectives as follows:

- 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:

As is illustrated throughout this report, the proposed lots are inconsistent with the predominate pattern, size and configuration of existing lots in the locality, and are not in harmony with the established subdivision pattern consisting of predominately larger lots. Furthermore, the proposed subdivision is inconsistent with Councils strategic intention to establish minimum Lot size within the R2 zone, which will have cumulative adverse impact on the ability to protect a low density residential environment within the R2 zone, and leading to greater loss of natural and biodiversity value and the natural environment landscape character of the land. As such, the proposed development will not ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

The proposal is considered to be inconsistent with the zone objectives of the R2 Low Density Residential zone.

1.2 Aims of Plan

The application provides an unbalanced subdivision pattern which is non-complaint with provisions of the WLEP 2011 and WDCP. It is inconsistent with the following clause within the aims of WLEP 2011:

Clause 1.2(2) -

(d) in relation to residential development, to:

(i) protect and enhance the residential use and amenity of existing residential environments, and

(ii) promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and

(f) in relation to environmental quality, to:

(i) achieve development outcomes of quality urban design, and

(iv) ensure that development does not have an adverse effect on streetscapes and vistas, public places, areas visible from navigable waters or the natural environment, and

The newly created lots are inconsistent with the predominate pattern, size and configuration of existing lots in the locality, and are not in harmony with the established subdivision pattern consisting of predominately larger lot sizes with larger landscaped areas.

Whilst there are some limited examples of smaller lots in the surrounding area, these do not form the predominate subdivision pattern. Furthermore, many of these are examples of subdivision which occurred prior to the gazettal of WLEP 2011 or were the later subdivision of existing dual occupancies.

The neighbouring properties to the north and south exhibit similar large lot sizes to the subject site of between 925sqm and 975sqm. Other surrounding lots predominantly exhibit lot sizes larger than 600sqm.

Furthermore, the proposed subdivision is inconsistent with Councils strategic intention to establish minimum Lot size within the R2 zone, which will have cumulative adverse impact on the ability to protect those values / aims within the R2 zone, leading to greater loss of natural and biodiversity value and the natural environment landscape character of the land.

4.1 Minimum subdivision lot size

Clause 4.1 Minimum subdivision lot size does not apply to Community Title subdivision.

4.1AA Minimum subdivision lot size for community title schemes

The application seeks to rely on Clause 4.1AA Minimum Subdivision lot size for Community Title Schemes of the Warringah Local Environment Plan 2011 to avoid the minimum lot size standard of 600sqm for the R2 zone, and the submission of a clause 4.6 variation to demonstrate that the variation to a development standard is justifiable in the specific circumstance.

Whilst it is agreed the minimum lot size standard does not apply to a Community Title Subdivision within a R2 zone, the proposal however does not satisfy the objectives of the R2 Low Density zone or the aims of the WLEP 2011. The proposal includes a variation of the other development controls which will set an undesirable precedent, notably Clause C1 Subdivision of the WDCP. Furthermore, the proposal does not comply with a separate requirement stipulated by WLEP 2011 Clause 2.6(2).

The proposed subdivision complies with Clause Clause 4.1AA and this is not a reason for refusal.

Warringah Development Control Plan

Built Form Controls

The following built form tables are related to the resulting buildings / structures within the proposed allotments.

Proposed Lot 1 is a proposed Community Lot with no dwelling.

Proposed Lot 2				
Built Form Control	Requirement	Proposed	% Variation	Complies
B1 Wall height	7.2m	<7.2m	-	Yes
B3 Side Boundary Envelope	North 4m	Within envelope	-	Yes
	South 4m	Within envelope	-	Yes
B5 Side Boundary Setbacks	North 0.9m	0.9m (to existing dwelling)	-	Yes
	South 0.9m	3m (to existing dwelling)	-	Yes
B7 Front Boundary Setbacks	6.5m	6.9m (to existing dwelling)	-	Yes

B9 Rear Boundary Setbacks	6m	1.3m (to existing rear WC & Laundry) 6.8m (to existing rear deck) 7.3m (to proposed parking area)	78.3% - -	No but existing and unchanged Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (180.7sqm)	41.6% (188sqm)	-	Yes

Proposed Lot 3				
Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	<7.2m	-	Yes
B3 Side Boundary Envelope	North 4m	Within envelope	-	Yes
	South 4m	Within envelope	-	Yes
B5 Side Boundary Setbacks	North 0.9m	3m (to existing dwelling)	-	Yes
	South 0.9m	0.9m (to existing dwelling)	-	Yes
B7 Front Boundary Setbacks	6.5m	6.5m (to existing dwelling)	-	Yes
B9 Rear Boundary Setbacks	6m	7.3m (to proposed parking area) 13.3m (to existing shed)	- -	Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (180.7sqm)	50.9% (230sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C1 Subdivision	No	No
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

A.5 Objectives

The application provides an unbalanced subdivision pattern which is non-complaint with provisions of the WLEP 2011 and WDCP. It is inconsistent with the following aims of WDCP:

- *To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood.*
- *To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome.*

The newly created lots are inconsistent with the predominate pattern, size and configuration of existing lots in the locality, and are not in harmony with the established subdivision pattern consisting of predominately larger lot sizes with larger landscaped areas.

Whilst there are some limited examples of smaller lots in the surrounding area, these do not form the predominate subdivision pattern. Furthermore, many of these are examples of subdivision which occurred prior to the gazettal of WLEP 2011 or were the later subdivision of existing dual

occupancies.

The neighbouring properties to the north and south exhibit similar large lot sizes to the subject site of between 925sqm and 975sqm. Other surrounding lots are predominantly exhibit lot sizes larger than 600sqm.

Furthermore, the proposed subdivision is inconsistent with Councils strategic intention to establish minimum Lot size within the R2 zone.

As such, the proposal development does not respond to the characteristics of the site and the qualities of the surrounding neighbourhood. It also does not ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome.

B9 Rear Boundary Setbacks

An existing detached WC and laundry at the rear of the subject site is proposed to be retained on proposed Lot 2. This suture has a setback to the rear boundary of 1.3m, representing a 78.3% non-compliance with the 6m requirement of this control.

However, this structure is existing. Proposed alterations and additions do not encroach the rear boundary setback. Furthermore, the proposal includes the demolition of other structures in the rear setback area, effectively contributing to ensuing greater compliance with the requirements and objectives of this control.

As no new works are proposed in the rear setback area, the proposal is considered to comply with the requirements and objectives off this control, despite existing non-compliances. This is not a reason for refusal.

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	R2 Low Density Residential zone requirements: Proposed new allotments: a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m ²	Lot 2: Minimum Width - 11.02m (15.2% variation) Minimum Depth - 9.875m (63.4% variation) Building Area - 211sqm (compliant) Lot 3: Minimum Width - 11.02m (15.2% variation) Minimum Depth - 9.875m (63.4% variation) Building Area - 211sqm (compliant)	No - Refer to discussion below this table
Access	Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.	The proposed development utalises the existing driveway crossover, proposing changes to the existing driveway and parking design.	Yes.

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.

Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.

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.

Driveways in excess of 200 metres will not be allowed for residential development.

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.

Passing bays should have regard to sight conditions and minimise vehicular conflict.

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

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

Width of accessways are to be as follows:

Number of lots to be serviced	Width of clear constructed accessway (m)
1 - 5	3.5

The proposal has been reviewed by Council's Development Engineer who raises no objections, subject to recommended conditions.

Access requirements have been achieved



	<table><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></table> <p>Provision of services in rights of carriageway are as follows:</p> <table><tr><td>Number of lots to be serviced</td><td>Additional width to be provided in Right of Carriageway (m)</td></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>	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		
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												
Design and construction	<p>All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards.</p> <p>Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.</p>	<p>The proposal has been reviewed by Council's Development Engineer who raises no objections, subject to recommended conditions.</p>	<p>Yes.</p>										
Drainage	<p>Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The</p>	<p>The proposal has been reviewed by Council's Development Engineer who raises no</p>	<p>Yes.</p>										

	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.	objections, subject to recommended conditions.	
Restrictions	Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.	The proposal has been reviewed by Council's Development Engineer who raises no objections, subject to recommended conditions.	Yes.
Environmentally constrained land	In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment. Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	The proposal has been reviewed by Council's Development Engineer who raises no objections, subject to recommended conditions. The site is not identified as being environmentally constrained land such as flooding, tidal inundation, threatened species, landslip risk or bushfire.	Yes.
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.	The proposed lots are not located on bush fire prone land.	Yes.

Description of non-compliance

Due to the use of Community Title subdivision, and the awkward placement of the Community Lot to attain technical compliance with other controls (such as parking), the minimum lot width of both Lot 2 and Lot 3 is 11.02m, narrowed by the proposed Community Lot (Lot 1). This is a 15.2% variation to the required 13m. Furthermore, the minimum depth of proposed Lot 2 and Lot 3 is 9.875m, again narrowed by the Community Lot. This is a 63.4% variation to the required 27m.

In conjunction with points raised throughout this Assessment Report on the inconsistency of the proposal with the established subdivision pattern and Councils strategic intention to establish minimum lot sizes within the R2 zone, this variation is not supported.

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 proposal is considered to be inconsistent with the existing subdivision pattern in the area. Furthermore, the proposed subdivision is inconsistent with Councils strategic intention to establish minimum lot size within the R2 zone. It is therefore considered that the proposed subdivision is an unacceptable outcome in relation to regulating the density.

The proposed development is **inconsistent** with this objective.

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

Comment:

The subject site is generally flat, with no major topographical features. Furthermore, the proposed allotments will achieve the minimum landscaped open space area as required by WDCP Clause D1 Landscaped Open Space and Bushland Setting. However, inconsistency with the existing subdivision pattern in the area and inconsistency with Councils strategic intention to establish minimum lot size within the R2 zone would contribute to the erosion of the predominate subdivision character. This in turn would impact the overall ability of subdivision and development to be controlled to ensure that natural landscape and topography are protected.

The proposed development is **inconsistent** 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:

As above, the proposed allotments will achieve the minimum landscaped open space area as required by WDCP Clause D1 Landscaped Open Space and Bushland Setting. The proposed subdivision is also sufficient from a stormwater and access perspective. However, the inconsistency with the existing subdivision pattern in the area and inconsistency with Councils strategic intention to establish minimum lot size within the R2 zone would contribute to the erosion of the predominate subdivision character. This in turn would impact the overall ability of subdivision and development to be controlled to ensure sufficient landscaping, private open space, drainage, utility services and access is attained.

The proposed development is **inconsistent** with this objective.

To maximise and protect solar access for each dwelling.

Comment:

The proposed development maintains reasonable solar access to surrounding development and within the created allotments. However, the inconstancy with the existing subdivision pattern in the area and inconsistency with Councils strategic intention to establish minimum lot size within the R2 zone would contribute to the erosion of the predominate subdivision character. This in turn would impact the overall ability of subdivision and development to be controlled to ensure solar access is maintained and protected.

The proposed development is **inconsistent** with this objective.

•

• To maximise the use of existing infrastructure.

Comment:

The creation of two residential lots will result in a substantial use of existing infrastructure including services.

The proposed development is **consistent** with this objective.

• To protect the amenity of adjoining properties.

Comment:

The proposed development maintains reasonable amenity to surrounding development and within the created allotments. However, the inconstancy with the existing subdivision pattern in the area and inconsistency with Councils strategic intention to establish minimum lot size within the R2 zone would contribute to the erosion of the predominate subdivision character. This in turn would impact the overall ability of subdivision and development to be controlled to ensure amenity is maintained and protected.

The proposed development is **inconsistent** with this objective.

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

Comment:

There are no relevant hazards that are applicable to the subject site.

The proposed development is **consistent** with this objective.

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$ 660 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 132,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- 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

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 Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/1109 for the Subdivision of one lot into three and alterations and additions to the existing development on land at Lot 17 DP 23118,39 Starkey Street, FORESTVILLE, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is considered unsuitable for the proposed development.

Particulars:

- The subject site is considered unsuitable for the proposed development, as the proposal represents an overdevelopment of the site and is inconsistent with the established subdivision character of the surrounding area.

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 State Environmental Planning Policy (Housing) 2021.

Particulars:

- As per the requirements of Clause 51 of the State Environmental Planning Policy (Housing) 2021, development consent must not be granted for the subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out.

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 2.6 Subdivision - consent requirements of the Warringah Local Environmental Plan 2011.

Particulars:

- As per the requirements of Clause 2.6(2) of the Warringah Local Environmental Plan 2011, development consent must not be granted for the subdivision of land on which a secondary dwelling is situated if the subdivision would result in the principal dwelling and the secondary dwelling being situated on separate lots, unless the resulting lots are not less than the minimum size shown on the Lot SizeMap in relation to that land

4. 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.

Particulars:

- The proposed development will not ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.

Particulars:

- The proposed development does not protect and enhance the residential use and amenity of existing residential environments, and promote development that is compatible with neighbouring development in terms of bulk, scale and appearance.

- The proposed development does not achieve development outcomes of quality urban design, and ensure that development does not have an adverse effect on streetscapes and vistas, public places, areas visible from navigable waters or the natural environment.
- Inconsistencies with the aims of the Warringah Local Environmental Plan 2011 arise from inconstancy with the predominate pattern, size and configuration of existing lots in the locality, which is characterized by predominately larger lot sizes of greater than 600sqm, with larger landscaped areas.
- Furthermore, inconsistencies with the aims of the Warringah Local Environmental Plan 2011 arise from inconsistent with Councils strategic intention to establish minimum lot size within the R2 zone, which will have cumulative adverse impact on the ability to protect those values / aims within the R2 zone, leading to greater loss of natural and biodiversity value and the natural environment landscape character of the land.

6. 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 A.5 Objectives of the Warringah Development Control Plan.

Particulars:

- The proposed development does not respond to the characteristics of the site and the qualities of the surrounding neighbourhood.
- The proposed development does not ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome.

7. 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.

Particulars:

- The proposed residential lots (Lot 2 and Lot 3) do not meet the minimum lot width or minimum lot depth control stipulated by Clause C1 Subdivision of the Warringah Development Control Plan.
- The proposed development is inconsistent with the objectives of Clause C1 Subdivision of the Warringah Development Control Plan, and the proposed variation to the control is not supported on merit.

8. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

Particulars:

- Assessment of the proposed development has found the proposal to be contrary to the relevant planning controls and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

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

Signed



Jordan Howard, Planner

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



Rodney Piggott, Manager Development Assessments