

STATEMENT OF ENVIRONMENTAL EFFECTS

**FOR THE PROPOSED DEMOLITION OF AN EXISTING SWIMMING
POOL, PAVING AND DECK AND TORRENS TITLE SUBDIVISION OF ONE
LOT INTO TWO LOTS AND CONSTRUCTION OF
A NEW COMMON ACCESS DRIVEWAY**

LOCATED AT

93 PARKES ROAD, COLLAROY PLATEAU

FOR

CHRISTOPH AND ANITA SCHRADER

**Prepared
September 2019**

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1.0 Introduction

This Statement of Environmental Effects accompanies details prepared by Adam Clerke Surveyors Pty Ltd, Ref. 16316A_3, dated 29 July 2019 for the proposed demolition of an existing swimming pool, paving and deck and Torrens Title subdivision of one lot into two lots and construction of a new common access driveway at **No. 93 Parkes Road, Collaroy Plateau**.

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 (Vegetation in Non-Rural Areas) 2017*
- *Warringah Local Environmental Plan 2011*
- *Warringah Development Control Plan*

Development Application No. DA2017/0743 for *Demolition of existing structures and subdivision of 1 Lot into 2 Lots* was approved by Council under delegated authority on 22 February 2018 and remains in force.

The current proposal seeks to retain the existing dwelling, with the subdivision layout being modified and the previously approved demolition is to be omitted from the application.

2.0 Property Description

The subject allotment is described as **93 Parkes Road, Collaroy Plateau** being Lot 14 within Deposited Plan 12832 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 D and a Preliminary Geotechnical Assessment has been prepared by White Geotechnical Group and is discussed further within this statement.

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

3.0 Site Description

The subject site is located on the north-eastern side of Parkes Road. The site is generally rectangular in shape, with an angled street frontage of 21.83m to Parkes Road, an eastern boundary of 83.44m, and a western boundary of 69.455m. The rear boundary measures 16.765m. The total site area is 1281m².

The site has a general fall to the south with stormwater from the development within the site being directed to the street gutter.

The details of the existing site as indicated on the survey plan prepared by Adam Clerke Surveyors Pty Ltd, Ref. No 16316, 19 January 2017 which accompanies the DA submission.



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

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. The existing adjoining dwellings comprise a mix of single and two storey dwellings.

The subdivision of lots within the immediate vicinity is a common feature, as indicated in the aerial view above.

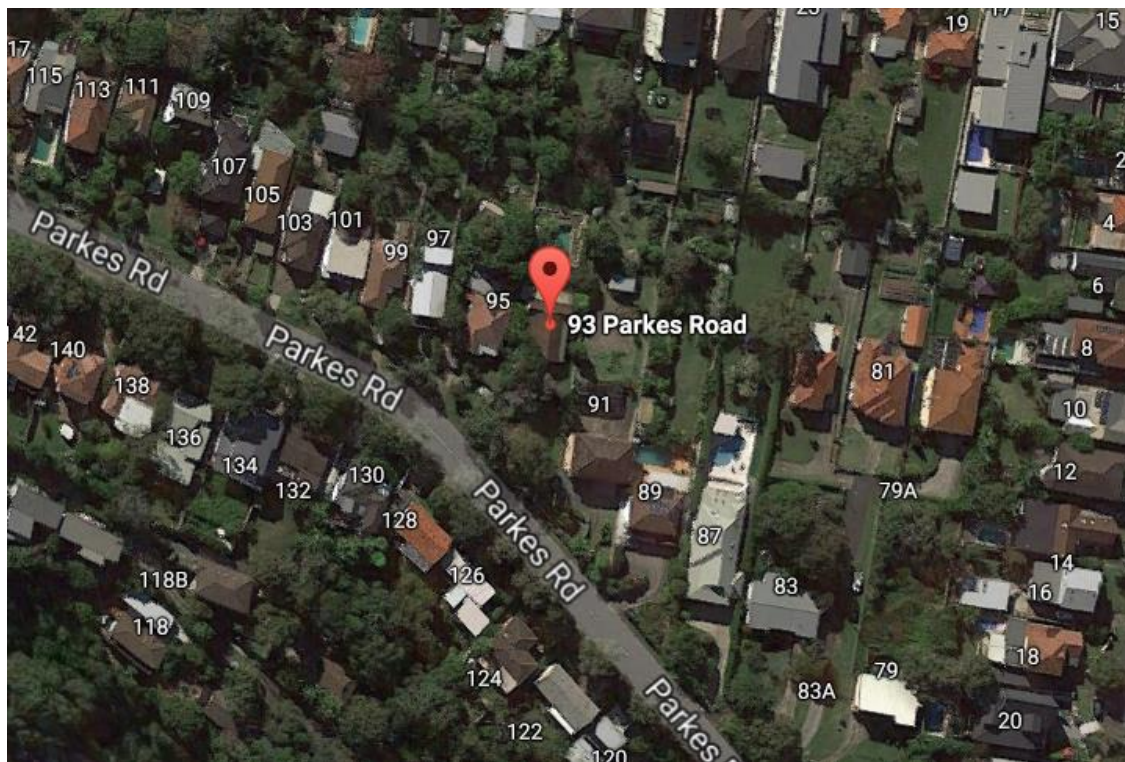


Fig 2: Aerial view of locality (Source: Google Maps)

5.0 Proposed Development

The proposal seeks consent for the proposed demolition of an existing swimming pool, paving and deck, together with the removal of two small additions to the rear of the existing dwelling and the Torrens title subdivision of one lot into two lots, including the construction of a new common access driveway.

The proposed northern and southern allotments have been defined as Proposed Lots 140 and 141 respectively.

Development Application No. DA2017/0743 for *Demolition of existing structures and subdivision of 1 Lot into 2 Lots* was approved by Council under delegated authority on 22 February 2018. This approval remains Active.

The current proposal seeks to retain the existing dwelling and the subdivision has therefore been modified to facilitate the retention of the dwelling.

A separate carport/parking area will be provided for Proposed Lot 141 forward of the existing dwelling, with provision for a passing bay to avoid vehicle conflict within the driveway.

A separate Development Application is being prepared for the construction of new two storey dwelling within Proposed Lot 140. An indicative dwelling design has been prepared by Wincrest Group Pty Ltd, which will provide for a two storey dwelling, with four bedrooms, living areas with alfresco entertaining area, double garage and vehicle turning area.

A copy of the indicative dwelling design prepared by Wincrest Group Pty Ltd is included with this DA submission. A concept landscape plan accompanies the indicative future dwelling design which identifies the potential landscaped areas which will result from the development of the site in the manner proposed.

With the retention of the existing dwelling, the construction of the new dwelling and the required access driveway including the turning and passing area, the total site will continue to retain at least 598.4m² of soft landscaping, which achieves the required 2m width.

An analysis of the available landscaped areas indicates the following indices:

Site Area - 1281m².

- Available landscaped area = 598.4m² or 46.7% (Complies)

Lot 140 – 505.8m²

- Available landscaped area = 205.9m² or 40.07% (Complies)

Lot 141 - 775.8m² (636.5m² excluding right of way)

- Available landscaped area = 392.5m² or 61.6% (Complies)

The concept architectural plans confirm that the site can be appropriately developed with a new family dwelling which provides for contemporary living requirements and which can observe Council's maximum building heights, setback and minimum landscaped area controls.

Vehicular access to both lots will be provided along the western boundary as detailed in the driveway plans prepared by Michal Korecky, Drawing No. 17040, dated 23 May 2019. A driveway access with a physical width of at least 3m is proposed, within a right of way to benefit each lot of 3.5m in width.

A passing bay is provided to reduce vehicle conflict and is noted in the driveway design prepared by Michal Korecky - Drawing No 17040, Sheet C1 dated 23 May 2019.

The existing swimming pool, paving and timber deck within the rear yard will be demolished to facilitate the future dwelling.

Two small rear additions to the rear of the existing dwelling will be demolished to allow increase the function of the rear yard area of the existing dwelling and to allow for the common driveway and services to be constructed and the right of carriageway and easements to be created.

The retention of the majority of the existing dwelling will result in the new dividing boundary between the lots being to within 3m of the rear alignment of the current dwelling. The current dwelling will maintain a large side yard area that will allow for private recreation and which will receive good solar access in accordance with Council's requirements. When combined with the rear yard area of at least 3m, suitable private open space area will be maintained.

The development indices for the site are:

Site Area (Lot 140):	505.8m ²
Site Area (Lot 141):	775.8m ² (636.5m ² excluding right of way)

The resulting subdivision will result in one blocks with an area which present a variation to the minimum subdivision lot size of 600m² of 15%.

Moreover, this proposal is quite consistent with the established subdivision pattern in Parkes Road & Perrey Street.

In the immediate vicinity of the subject site, we note the following precedents from the NSW Planning Portal:

- 97 Parkes Road – 606.019m²
- 99 Parkes Road – 585.456m²
- 101 Parkes Road – 576.101m²
- 12 Perrey Street – 649.361m²
- 14 Perrey Street – 646.434m²
- 16 Perrey Street – 653.554m²
- 18 Perrey Street – 644.954m²
- 20 Perrey Street – 651.709m²

We request that the Council look favourably on this application as it will result in a better planning outcome in that the opportunity to provide for additional housing in the locality is consistent with the Objectives of the R2 Low Density Residential Zone.

Additionally, the retention of the existing dwelling and its building fabric is considered to be a sensible and responsible approach to ecologically sustainable development principles, given the significant resources utilised through the demolition and replacement of the existing dwelling, which is in good order and provides for family accommodation.

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 proposal is accompanied by an Arboricultural Impact Assessment prepared by Tree Consulting by Jo, dated 24 July 2017. In accordance with the recommendations contained within the report, a tree protection plan shall be prepared prior to any further works being carried out. The proposal is therefore considered to be consistent with the aims of the SEPP.

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.*

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 existing and 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.

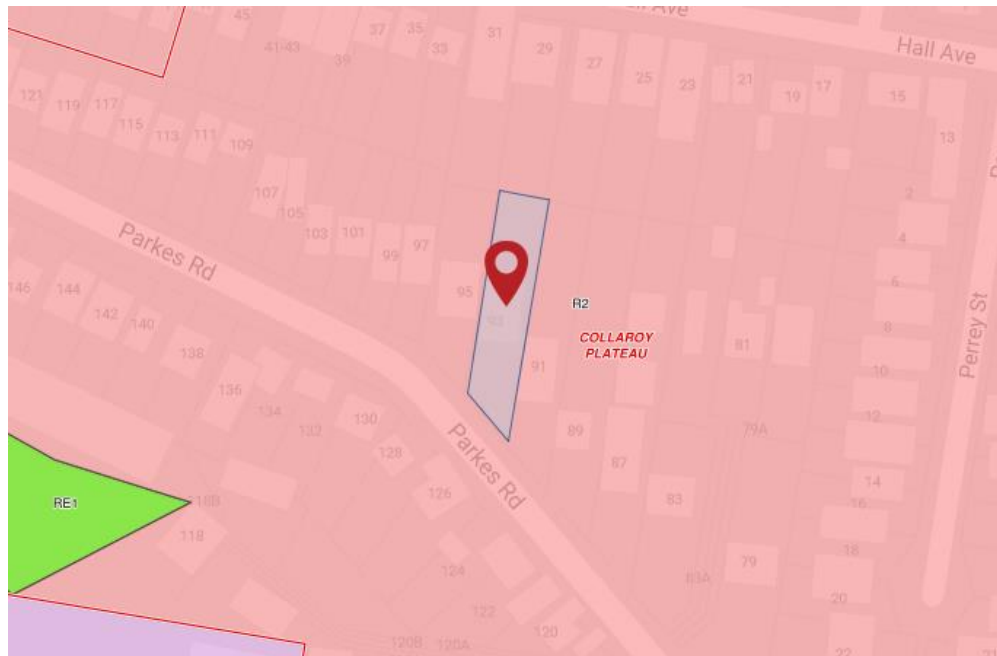


Fig 3: Zoning map extract (Source: NSW Planning Portal)

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 140):	505.8m ²
Site Area (Lot 141):	775.8m ² (636.5m ² excluding right of way)

Proposed Lot 140 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.

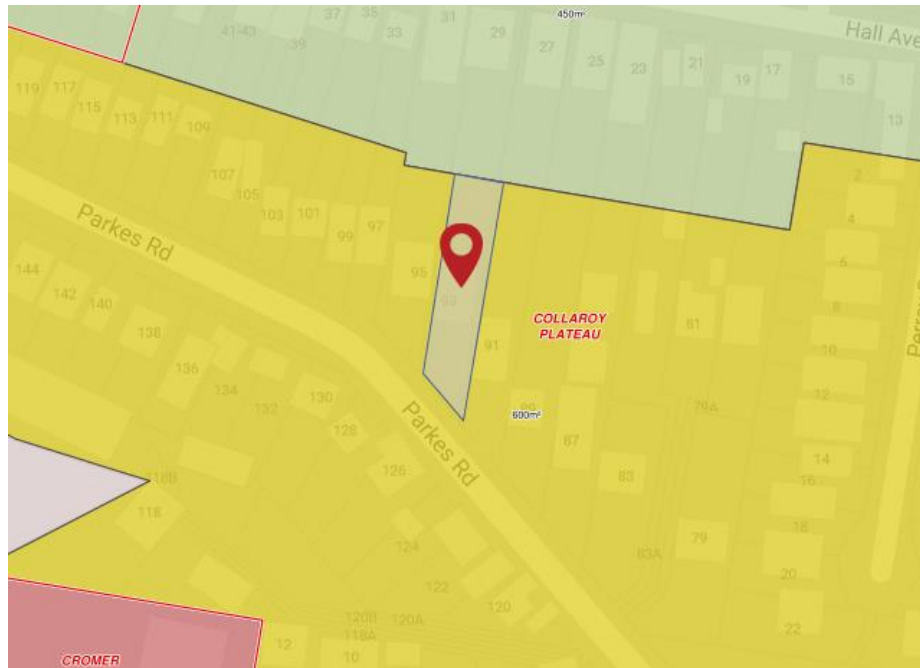


Fig 4: Lot size map (Source: NSW Planning Portal)

Clause 6.2 – Earthworks

The application seeks consent for the subdivision of the land into two allotments. The minor works will not necessitate substantial disturbance to the existing landform. All works will be carried out under the supervision of the Consulting Structural Engineer.

Clause 6.4 – Development on Sloping Land

The site is identified as Landslip Prone Land. Accordingly, a Preliminary Geotechnical Assessment has been prepared by White Geotechnical Group, Reference No. J1215AA, dated 30 January 2019. The report concludes that provided good engineering and building practice are followed, no further geotechnical assessment is required for the proposed development.

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.

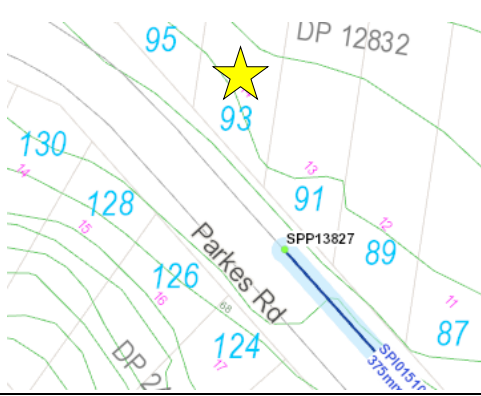
Standard	Required	Compliance/ Proposed
C1 – Subdivision	<p><u>Requirements</u></p> <p>1. R2 Low Density Residential zone requirements:</p> <p>Proposed new allotments:</p> <p>a) Min width: 13m b) Min depth: 27 m and c) Min building area: 150m²</p> <p><u>Access</u></p> <p>2. Motor vehicle access to each 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>The proposed Lots 140 and 141 seek a minimum width of 16.765m, and a minimum depth of 30.175m and 39.28m respectively.</p> <p>Each lot can accommodate a building platform with a minimum size of 150m², with concept architectural and landscape plans provided to detail the future dwelling within Proposed Lot 140</p> <p>Each lot will have access to the common driveway which provides vehicular access to Parkes Road via a single driveway entry point.</p> <p>Each lot will have area available to turn within the site and exit in a forward direction.</p> <p>The ROW provides access to the proposed 2 lots from Parkes Road.</p> <p>The access driveway will provide for a minimum clear height of 3m and will permit emergency access for ambulance vehicles (min 2.8m clearance required).</p>

	<p>Driveways, accessways, etc., to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.</p> <p>Driveways in excess of 200 metres will not be allowed for residential development.</p> <p>Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.</p> <p>Passing bays should have regard to sight conditions and minimise vehicular conflict.</p> <p>Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay.</p> <p>Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.</p>	<p>The proposed driveway design is noted in the engineering plans prepared by Michal Korecky, Drawing No. 17040, dated 23 May 2019.</p> <p>A driveway access with a physical width of at least 3m is proposed, within a right of way to benefit each lot of 3.5m in width.</p> <p>A passing bay is provided to reduce vehicle conflict.</p>
	<p>Width of accessways*</p> <p>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>The proposed ROW is 3.5m in width, with a minimum 3m wide driveway which complies with this control.</p>
	<p>*Notes to Table:</p>	

	<p>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> 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>N/A – services will be provided underneath the driveway.</p> <p>N/A</p>
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	<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><u>Environmentally constrained land</u></p> <p>6. 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.</p> <p>Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.</p>	<p>Complies – refer to Stormwater Concept Plan prepared by Michal Korecky which details the proposed stormwater drainage by gravity to the street.</p> <p>Noted</p> <p>The site is identified as Area D on Council's Land Slip Risk Map. The proposed allotments are capable of accommodating dwellings that minimise the hazard risk.</p> <p>N/A</p>
<p>C2 – Traffic, Access and Safety</p>	<p>Objectives</p> <p>To minimise:</p> <ul style="list-style-type: none"> a) traffic hazards; b) vehicles queuing on public roads c) the number of vehicle crossings in a street; 	<p>The proposal will retain the existing single driveway access point, with no loss of on street parking opportunity.</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>A passing bay has been provided in order to maximise safe access for the occupants of the proposed allotments.</p> <p>Council’s pre-lodgment meeting identified the potential need for the inclusion of a passing bay, due to the length of the driveway.</p>
C4 – Stormwater	<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 Concept Plan prepared by Michal Korecky, Drawing No. 17040, dated 21 December 2018, which details the proposed stormwater drainage by gravity to the street.</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 is not affected by Council's drainage infrastructure.</p>
<p>D1 – Landscaped Open Space and Bushland</p>	<p>Min 40% Landscaped Area to be maintained</p>	<p>Each site will retain the opportunity to provide for a landscaped area which complies with Council's minimum 40% (min 2m wide) control.</p> <p>The extent of the landscaped area to be retained within the proposed allotments will be addressed with the future Development Applications for the future dwellings and is detailed in the landscape concept plans provided with the DA submission.</p>
<p>D2 – Private Open Space</p>	<p>Dwelling houses with three or more bedrooms Min 60m² with min dimension 5m</p>	<p>The private open space areas within the proposed allotments will be addressed with the future Development Applications for the future dwellings.</p>
<p>D21 – Provision and Location of Utility Services</p>	<p>Objectives</p> <ul style="list-style-type: none"> • To encourage innovative design solutions to improve the urban environment. • To ensure that adequate utility services are provided to land being developed. 	<p>Normal utility services are available to the site.</p>

	Utility services to be provided	
E1 – Private Property Tree Management	Arboricultural report to be provided to support development where impacts to trees are presented	The proposal is accompanied by an Arboricultural Impact Assessment prepared by Tree Consulting by Jo, dated 24 July 2017. In accordance with the recommendations contained within the report, a tree protection plan shall be prepared prior to any further works being carried out.
E2 – Prescribed Vegetation	Not identified on map	N/A
E3 – Threatened species, populations, ecological communities	Not identified on map	N/A
E4 – Wildlife Corridors	Not identified on map	N/A
E5 – Native Vegetation	Not identified on map	N/A
E6 – Retaining unique environmental features	Not identified on map	No significant features within site.
E7 – Development on land adjoining public open space	Not identified on map	N/A
E8 – Waterways and Riparian Lands	Not identified on map	N/A
E10 – Landslip Risk	Identified on map as Area D. Nature of works to excavate >2m requires the submission of a Geotechnical Hazard Assessment. No significant excavation of the site required.	The site is identified as Landslip Prone Land. Accordingly, a Preliminary Geotechnical Assessment has been prepared by White Geotechnical Group, Reference No. J1215A, dated 30 January 2019. The report concludes that provided good engineering and building practice are followed, no further geotechnical assessment is required for the proposed development.
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. 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 the WLEP 2011 & the controls of the Warringah Development Control Plan.

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.

The future development of the land can be designed to respect the streetscape character objectives of the DCP and will provide the opportunity for cohesive and sympathetic additions to the site which will make a positive contribution to the area.

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

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

7.5 Any 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 demolition of an existing swimming pool, paving and deck and minor portion of the existing dwelling with the majority of the existing dwelling to be retained, together with the Torrens Title subdivision of one lot into two lots and construction of a new driveway, 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 character of the area.

The proposal is considered to be well designed having regard to the relevant provisions of the Council's LEP and DCP.

7.7 The suitability of the site for the development

The subject land is currently zoned R2 Low Density Residential Zone 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 matter for Council in the consideration of this proposal.

7.10 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 proposal provides for the proposal seeks consent for the demolition of an existing swimming pool, deck and paving and minor portions of the existing dwelling with the majority of the existing dwelling to be retained, together with Torrens Title subdivision of one lot into two lots and construction of a new driveway and car parking area with passing bay, will not have a detrimental impact on the adjoining properties or the locality.

The proposal intends to retain the significant majority of the existing dwelling.

As the proposed development will not have any significant impact on the environment, scenic quality of the area or the amenity of the immediate neighbours, 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

APPENDIX

CLAUSE 4.6 SUBMISSION – MINIMUM LOT SIZE

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

**93 PARKES ROAD, COLLAROY PLATEAU
FOR THE TORRENS TITLE SUBDIVISION OF ONE LOT INTO TWO LOTS**

**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 demolition of existing swimming pool, paving and deck and Torrens title subdivision of one lot into two lots and construction of a new common access driveway
At: 93 Parkes Road, Collaroy Plateau
Owner: Christoph Schrader
Applicant: Christoph Schrader C/- Vaughan Milligan Development Consulting

1.0 Introduction

This written request 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 140 and 141, will have the following indices:

Site Area (Lot 141):	710.6m ² (636.5m ² excluding easement)
Site Area (Lot 140):	505.8m ²

The proposed Lot 141 will readily comply with the lot size control, and Lot 140 will present a variation to the lot size control.

Proposed Lot 140 presents a variation to the minimum lot size of 94.2m² or 15.7%, which is sought in order to retain the existing dwelling within Proposed Lot 141.

The controls of Clause 4.1 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 subdivision of one lot into two, 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 the subdivision of one lot into two lots, together with the demolition of the existing pool and associated structures and construction of a common access driveway and services, which are sensitive to the location and the topography of the locality.

Despite the non-compliance with the minimum lot size control, the proposed subdivision will provide lots that are capable of accommodating future dwellings that will provide suitable amenity for occupants and neighbours, and therefore compliance with the minimum allotment size 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 [2014] 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 proposed development of and use of the land within the R2 Low Density Residential Zone is consistent with the zone objectives, 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.*

Comments

It is considered that notwithstanding the extent of the non-compliance with the minimum lot size for Proposed Lot 140, the proposed subdivision 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 low density residential environment.***

The R2 Low Density Residential Zone contemplates low density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the opportunity to provide for an appropriate area for a new residential dwelling on the newly created lot (as evidenced by the architectural plans prepared by Wincrest Group Pty Ltd), in a manner which will provide for an appropriate level of family accommodation and in a form which respect the predominant height and scale of the surrounding dwellings.

The proposed retention of the existing single storey dwelling will also see sensible resource use by avoiding demolition and replacement of the existing dwelling which is in good order and provides for appropriate family accommodation.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and will not be a visually dominant elements in the area.

The compatible form and scale of the new dwelling will meet the housing needs of the community within a single dwelling house which is a permissible use in this low density residential zone.

- ***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 common driveway, passing bay and car stand area for Proposed Lot 141, 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.

Accordingly, it is considered that the site may be developed with a variation to the prescribed minimum lot size control, whilst maintaining consistency with the zone objectives.

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 minor variation to the minimum lot size control, it is considered that the proposed Lot 140 is capable of accommodating future development which will contribute to the housing stock in Collaroy Plateau whilst maintaining consistency with the desired density of the locality.

The proposal is considered to be consistent with the relevant Objectives of Clause 4.1:

(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,

The proposed lots which will result from the development are compatible with the form and size of the surrounding development pattern. The retention of the existing dwelling and the proposed design for the new dwelling within Proposed Lot 140 confirm that the lots can be readily developed and remain consistent with the surrounding character of single detached dwellings.

(b) to provide for subdivision where all resulting lots are capable of providing for the construction of a building that is safe from hazards,

The indicative design prepared by Wincrest Group Pty Ltd for Proposed Lot 140 confirms that the new lot can be readily developed for a contemporary family home with good amenity and which will meet Council's built form controls.

The supporting Consultant reports address the hazards applying to the land and support the future development of the sites.

(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,

As discussed, the indicative design prepared by Wincrest Group Pty Ltd for Proposed Lot 140 confirms that the new lot can be readily developed for a contemporary family home with good amenity and which will meet Council's built form controls.

(d) to provide for subdivision that does not adversely affect the heritage significance of any heritage item or heritage conservation area,

The site does not contain nor adjoining any items of heritage significance.

(e) to provide for subdivision where all resulting lots can be provided with adequate and safe access and services,

The stormwater management and driveway design plans prepared by Michal Korecky confirm that the sites can be provided with safe vehicle access and all required services can be provided to each lot.

(f) to maintain the existing function and character of rural areas and minimise fragmentation of rural land,

The site is not within the vicinity of any rural land.

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

As discussed, the indicative design prepared by Wincrest Group Pty Ltd for Proposed Lot 140 confirms that the new lot can be readily developed for a contemporary family home with good amenity and which will meet Council's built form controls.

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 140 and 141 will have the following indices:

Site Area (Lot 140):	505.8m ²
Site Area (Lot 141):	775.8m ² (636.5m ² excl. ROW)

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

In the *Wehbe* judgment (*Wehbe v Warringah 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 purpose of the standard is relevant but the purpose is satisfied.

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 passing bay which will contribute to the housing stock in Collaroy Plateau 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.

The proposed Lot 141 readily complies with the control, and the northern lot does not meet the required 600m² control.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for minimum lot size.

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.


7.0 Conclusion

This development proposes a departure from the required minimum lot size development standard, with the development presenting a non-compliance of 94.2m² or 15.7% for Proposed Lot 140. Proposed Lot 141 will readily comply with the lot size control.

This written request to vary 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 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.

A handwritten signature in black ink, reading "Vaughan Milligan". The signature is written in a cursive, flowing style.

VAUGHAN MILLIGAN

Town Planner