

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1090
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 14 DP 12832, 93 Parkes Road COLLAROY PLATEAU NSW 2097
Proposed Development:	Alterations and additions to the existing dwelling and subdivision of 1 lot into 2
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Christoph Wolfgang Schrader Anita Schrader
Applicant:	Christoph Wolfgang Schrader Anita Schrader
Application Lodged:	03/10/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	25/10/2019 to 08/11/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 15.7%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 93,000.00

Executive Summary

The application seeks consent for the subdivision of one (1) Lot into two (2) Lots, demolition works of the existing dwelling house, construction of a new shared access driveway, and ancillary site works.

The main issues associated with the assessment of the application relates to the significant variation to the minimum Lot size of proposed Lot 140 at 505.sqm and the manner in which the Lot sizes and built form relate to the existing character of the R2 Low Density Residential Area. The proposal is not sufficiently complementary and compatible with the established subdivision character and is inconsistent with the

desired future character envisaged for this area of Parkes Street.

The retention of the existing dwelling house creates a number of non-compliance's with the relevant planning controls, such as the rear setback and non-compliant driveway widths and gradients. These non-compliance's contributes to a proposal that is inappropriate and unsuitable for the site.

Accordingly, due to the number of unresolved matters the application is referred to the Northern Beaches Local Planning Panel (NBLPP) with a recommendation for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The application proposes the following works:

- Torrens Title subdivision of one (1) Lot into two (2) Lots configured as;
Proposed Lot 140: 505.8 sqm (minimum dimensions 30.1m x 16.7m)
Proposed Lot 141: 636.5 sqm (minimum dimensions 53.2m x 21.82m) - Total Lot area is 775.8sqm, including the right of carriageway & passing bay
(Note: the minimum Lot size within this area is 600sqm excluding the right of carriage way)
- Demolition of the rear of the existing dwelling house, swimming pool, paving & decking, and ancillary site preparation works;
- Construction of a driveway along the western boundary (and creation of right-of-way) for shared access to each Lot; and
- Connections for infrastructure services and ancillary site works.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.1 Minimum subdivision lot size
Warringah Local Environmental Plan 2011 - Warringah Local Environmental Plan 2011
Warringah Development Control Plan - B5 Side Boundary Setbacks

Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - C1 Subdivision
 Warringah Development Control Plan - C4 Stormwater
 Warringah Development Control Plan - D2 Private Open Space

SITE DESCRIPTION

Property Description:	Lot 14 DP 12832 , 93 Parkes Road COLLAROY PLATEAU NSW 2097
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Parkes Road, Collaroy Plateau. The site is located within the R2 Low Density Residential Zone within the Warringah Local Environment Plan 2011.</p> <p>The site has a surveyed area of 1,281square metres (sqm). The subject Lot has an angled frontage of 21.83 metres (m) along Parkes Road and a depth of 83.4m to 69.46m, along the eastern and western boundaries respectively.</p> <p>The site has a moderate slope across most of the site with the land falling steeply at the front to Parkes Road. The land is located within 'Land Slip Risk Map-Area D'.</p> <p>Access to the site is from Parkes Road, with stormwater draining to the street.</p> <p>A detached dwelling house, garage and a swimming pool are situated on the site with some small to medium sized trees scattered across the property.</p> <p>Adjoining and surrounding development is characterised by low-density, detached dwellings in a landscape settings. Lot sizes vary in the vicinity of the site with smaller Lots (<700 sqm) to the west and some larger lots (>1000sqm) to the east, north and south along Parkes Road.</p>

Map:



SITE HISTORY

A search of Council's records has revealed that the site has been the subject of the following relevant development applications and Pre-Lodgement Meetings:

Pre-Lodgement Meeting No. PLM2018/0136

A Pre-Lodgement meeting was held on the 28 June 2018 between Council staff and the owner / applicant to discuss the construction of the dwelling houses and variations to the conditions of consent for the approved subdivision. The Pre-Lodgement meeting discussed the change in Lot sizes, and amendments to the positive covenants placed on each Lot as part of **DA2017/0743**.

It was concluded as part of the formal Pre-Lodgment that a Lot size of 515sqm was to be avoided and would not be supported, and that full compliance with all controls will be expected for any new dwelling house. Any new designs must accommodate the need for compliant passing bays, vehicle turning room, or any proposed pools, decks and the like.

In the days and weeks after the meeting, further discussions occurred that included assessments of different subdivision options, including integrating with a subdivision on a neighbouring property to create a more balanced subdivision pattern consistent with the surrounding area.

Development Application DA2017/0743

Development Application for the demolition of existing structures and subdivision of 1 (one) Lot into 2 (two) Lots was approved by Council on the 22 February 2018. The application included the creation of 2 (two) Lots being, Lot 140 at 580sqm and Lot 141 at 560.4sqm (701sqm including the right of carriageway are & passing bay).

Pre-Lodgement Meeting No. PLM2017/0050

A Pre-Lodgement meeting was held on 26 May 2017 between Council staff and the owner / applicant to discuss demolition works and subdivision of 1 lot into 2 lots. The Pre-Lodgement meeting discussed

the option of retaining the existing dwelling (pier & beam construction) and relocating it to enable access to the rear. Alternatively consideration was made for a Lot size variation. It was recommended that any Lot Size variation should demonstrate site areas of 550+ sqm for the front Lot and 600 sqm for the rear Lot (16.75m x 35.8m) in order to provide a more balanced subdivision pattern.

Building Applications

Building application **No.BA5002/4540** for alterations and additions to a dwelling house was approved by Council in 1994.

Building application **No.BA5001/3529** for construction of a swimming pool was approved by Council in 1991.

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	None applicable.
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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a</p>

Section 4.15 Matters for Consideration'	Comments
	<p>condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered unsuitable for the proposed development, in so far as the proposal represents inappropriate and overdevelopment of the site that is not consistent with the established subdivision character of the surrounding area.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>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.</p>

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 development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>A previous approval for subdivision works on the site is noted. The current application indicates provision of the driveway on the western boundary, whereas the current approval provides a 500mm wide garden strip along the driveway edge for screen planting. No opportunity for screen planting is provided in the current application along the western boundary, as this would be a preferred outcome.</p> <p>It is noted however that the retention of the existing dwelling in the front Lot enables retention of trees in the front yard that were previously approved for removal, which is supported.</p> <p>There are no objections to the proposal subject to applied conditions.</p>
NECC (Development Engineering)	<p>The proposed 2 lot subdivision is not supported for the following reasons:</p> <p>1) Driveway design</p> <ul style="list-style-type: none"> The minimum clear constructed driveway widths do not comply with C1 Subdivisions (Warringah Council DCP). The minimum clear constructed width required is 3.5m for the entire length of driveway. The proposed driveway width is 3.0m near the existing dwelling in a number of locations which is not acceptable. The minimum right of way width required is 4.0m which includes a 0.5m of additional width for services (see Clause C1 Subdivisions) The maximum driveway grade of 25% (1 in 4) is not suitable for a ROW , Council's Auspec One recommends an absolute maximum longitudinal grade for roads of 16%. <p>2) Drainage design</p> <ul style="list-style-type: none"> A Drains model is to be submitted to council for review as required by <i>Appendix 2- Full computation method of Councils "On Site Stormwater Detention Technical Specification"</i>. Additionally minimum information is to be provided as required by section 3.2 of Councils "On Site Stormwater Detention Technical Specification". <p>Planners Comment: As the Development Engineers cannot support the proposed application in its current form, these above issues will be included as reasons for the applications refusal.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Warringah Local Environmental Plan 2011

Is the development permissible?	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
Minimum subdivision lot size:	600sqm	Lot 141 - 636.5sqm (775.8sqm including access handle) Lot 140 - 505.9sqm	- 15.7%	Yes No

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Warringah Local Environmental Plan 2011

Aims of the Warringah Local Environment Plan

The application provides an unbalanced subdivision pattern, and creates non-compliant built form that is not consistent with the following clauses:

Clause(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

(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.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Minimum Subdivision Lot Size
Requirement:	600sqm
Proposed:	Proposed Lot 140 : 505.8 sqm Proposed Lot 141 : 636.5 sqm (775.8sqm, including the right of carriageway & passing bay)
Percentage variation to requirement:	Lot 140 : 15.7% Lot 141 : No variation

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.1 - Minimum subdivision lot size development standard is not expressly excluded from the operation of this clause.

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

The application proposes to vary the minimum Lot size, with one of the two lots proposed being only 505.8m² (Lot 140), a variation of 15.7%.

There are no environmental features, such as sloping topography, significant canopy trees, or rock outcrops to justify the contravention, rather the undersized Lot is due to the retention of the existing dwelling house. The retention of the dwelling house gives rise to additional non-compliance with other Councils requirements and Policies, such as rear boundary setbacks, inadequate driveway widths and non-compliant driveway gradients.

The proposed lot configuration presents a non-compliant dwelling house for Lot 141, and a possible complying dwelling house for Lot 140. However, the proposed dwelling for this site will be constrained by the smaller allotment size.

The proposed building envelopes sited on the survey plans would presumably have a negligible impact by virtue of overshadowing on adjoining allotments. However, the dwelling house to be retained demonstrates a non-compliant rear setback and sites directly to the access driveway, with no ability to incorporate a landscaping buffer along the western side setback to provide amenity to the occupants, the western neighbouring site or the streetscape.

A reconfiguration of the allotments to achieve greater compliance would enable the proposed development to be sited more harmoniously in the streetscape. Therefore, it is considered providing greater Lot Size compliance will achieve a better environmental outcome in these circumstances.

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

Therefore, the applicant has not satisfied the obligation to demonstrate that strict compliance with the required minimum Lot size is considered unreasonable and unnecessary in the circumstances.

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"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."

It is not agreed that there is sufficient environmental planning grounds to vary the standard for the proposed subdivision, nor that the proposed Lot sizes are consistent with the establish subdivision character of this area of Park Street.

Whilst it is recognised that surrounding properties vary in Lot sizes, the proposed Lot size of Lot 140 at 505.8m² is not considered consistent in the context of surrounding development. For example, the surrounding Lot sizes of adjoining properties are as follows:

- No. 99 Parkes Street (586m²)
- No. 97 Parkes Street (607m²)
- No. 95 Parkes Street (1093m²)
- No. 91 Parkes Street (1465m²)
- No. 89 Parkes Street (1745m²)
- Number 83 Parkes Street has a recently approved subdivision (April 2018) for two Lots being 588m² and 610m².

Therefore, the proposed Lot size of Lot 140 at 505.8m² is not consistent with the pattern, size and configuration of the majority of allotments within the streetscape and will not maintain a reasonable visual continuity.

The applicant argues that the retention of part of the dwelling house provides ecologically sustainable development. However, maintaining the dwelling house will create a development that displays a number of non-compliance's with the relevant planning controls, contributing to a proposal that is inappropriate and unsuitable for the site.

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

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the WLEP 2011 are:

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

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality.

Comment:

Surrounding allotments vary in configuration and scale from deep rectangular allotments to smaller scaled allotments. The subdivision proposed is for two (2) rectangular Lots of differing size sharing a common driveway access. The proposed Lot size of Lot 140 is smaller than the Lot sizes to the size west of the site (toward Heather street), and significantly smaller than existing Lots to the immediate east of the site.

In this case, a variation of 15.7% against the minimum Lot size would impose unreasonable constraints on future dwellings on the site, particularly when greater compliance with the minimum Lot size could easily be achieved.

Therefore, the 15.7% variation sought for Lot 140 is considered to be of detriment to the residential character of the area as the proposed two allotments are not consistent with the pattern, size and configuration of the majority of allotments within the streetscape and will not maintain a reasonable visual continuity.

Therefore, the proposal is not consistent with this objective.

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

Comment:

This objective is not applicable to the subject development site which is zoned for residential purposes.

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

Comment:

The objective is not applicable as the subject allotment is not a land holding in a rural locality.

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

Comment:

The subject area is not considered to be a locality of any major environmental significance as the areas surrounding the development site has been densely urbanised to such a magnitude that would render the 'natural state' of the land and environment imperceptible.

The development proposed could satisfactorily achieve a low intensity use of the land as envisioned by the DCP and LEP, thereby satisfying the relevant parts of this objective.

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

Comment:

The site is not upon land noted as being Bushfire Prone. Proposed subdivision will not create any adverse impacts on the existing habitat value of the land. Hence, this objective is achieved.

(f) to protect and enhance existing remnant bushland.

Comment:

There is considered to be no 'remnant' bushland on the subject allotment, therefore the objective is not applicable.

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

Comment:

The site does not accommodate any significant natural landscape features, therefore the objective is not applicable.

(h) to manage biodiversity.

Comment:

The site is not identified as having significant biodiversity assets or existing natural features that warrant environmental protection, therefore the objective is not applicable.

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

Comment:

Council's Development Engineer has advised that inadequate information has been provided to ensure proper management of stormwater.

Therefore, the proposal is not consistent with this objective.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposal will provide two smaller lots which are capable of catering for the housing needs of the community.

It is considered that the development satisfies this objective.

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

Comment:

The proposal does not involve any other permitted land uses within the subject land.
The proposal will not prevent other sites from providing facilities or services to meet the day to day needs of residents.

It is considered that the development satisfies this objective.

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

Comment:

Proposed Lot 140 is significantly undersized by up to 15.7% from the 600 sqm minimum Lot size for the zone. In addition to this, Lot 141 width is constrained to 12.7m due to the right of carriageway, demonstrates a non-compliant rear setback, and is directly adjoining the driveway with no appropriate separation distance from the side boundary and right of carriageway easement.

Therefore, the undersized rear Lot 140, and the front Lot 141 that retains the dwelling house will not maintain consistency with the built form controls nor minimise amenity impacts on neighbours.

It is considered that the development does not satisfy this objective.

Conclusion:

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

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

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

Planning Circular PS dated 24 May 2019, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Minimum Subdivision Lot Size Development Standard can not be assumed by the Local Planning Panel.

Warringah Development Control Plan

Built Form Controls

Built Form Control Lot 141 - retaining the existing dwelling	Requirement	Proposed	% Variation*	Complies
B5 Side Boundary Setbacks	0.9m East	4.1m	-	Yes
	0.9m West	3m 0.0m (access handle)	-	Yes
B7 Front Boundary Setbacks	6.5m	22.6m	-	Yes
B9 Rear Boundary Setbacks	6m	3m	50%	No

D1 Landscaped Open Space (LOS) and Bushland Setting	40%	64.3% (498.9sqm)	-	Yes
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Lot 140 - indicative house plan

An estimated building footprint of approx. 208m² for Lot 140 is shown to be able to be located entirely within the required setback areas. However, whilst an adequate landscaped area is demonstrated, areas for driveway/access, decking, or outdoor recreational areas not been demonstrated and could significantly reduce the available landscape area.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5 Side Boundary Setbacks	Yes	No
B9 Rear Boundary Setbacks	No	No
C1 Subdivision	No	No
C2 Traffic, Access and Safety	Yes	Yes
C4 Stormwater	No	No
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	No	No
D8 Privacy	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
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Detail of non-compliance

In order to retain the existing dwelling on the site, partial demolition of the dwelling must be undertaken, including areas to the western side of the dwelling. However, the dwelling will directly adjoining the driveway parallel to the western boundary which does not represent a good design outcome.

The siting of the dwelling house gives no ability to provide required spatial separation for the driveway access (right of carriageway), and no ability to provide the required 0.5m for required services without further areas of the dwelling house being demolished see figure 1 below.

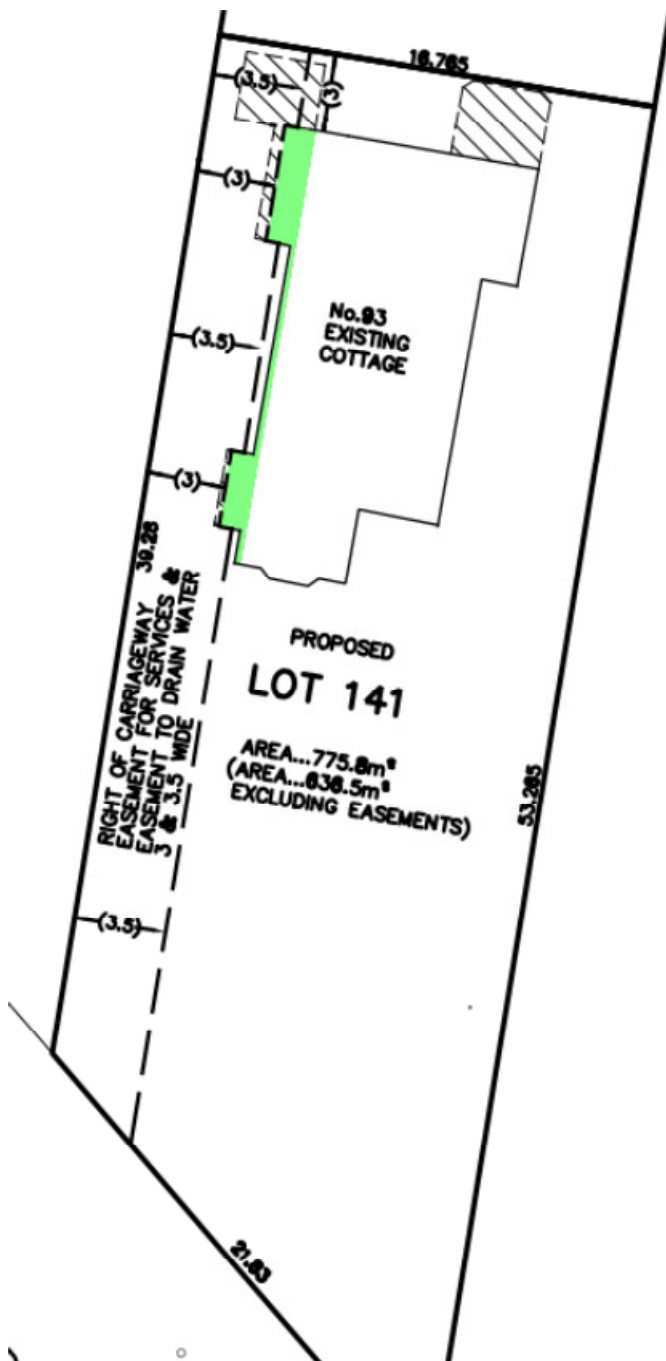


Figure 1. The additional areas of demolition required to provide compliant widths for the driveway (right of carriageway) shown in green.

Therefore, whilst the dwelling house meets the required side setbacks of 0.9m, the location of the dwelling gives rise to non-compliant setbacks for the driveway/service access and does not meet the objectives of the side boundary setback control as detailed below.

Merit consideration -

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- To provide opportunities for deep soil landscape areas.

Comment:

Numerically, the Lot fronting Parkes road (Lot 141) provides a 64.3% (498.9m²) of deep soil landscaped area. However, the driveway (right of carriageway) dominates the western side setback with no ability to provide spatial separation for appropriate deep soil landscaped areas to preserves the residential character of the site when viewed from surrounding private and public properties.

Therefore, proposal does not to satisfy this objective.

- *To ensure that development does not become visually dominant.*

Comment:

The driveway (right of carriageway) visually dominates the western side setback, and with no spatial side setbacks to the retained dwelling. This proposed outcome shows no attempt to minimise the visual dominance resulting in a building alignment and proportion that is inconsistent with the surrounding area of Parkes Street.

Therefore, proposal does not satisfy this objective.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

As discussed above, the dominance of the driveway due to a lack of progressive western setbacks, is not considered sufficient to minimise the scale and bulk of the proposal.

Therefore, proposal does not satisfy this objective.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The development could comply with the requirements of the clause and not unreasonably impact upon the amenity of neighbouring properties in terms of privacy and access to sunlight.

Therefore, the proposal does satisfy this objective.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The development was found to have no impact upon district views to the south.

The development does satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the

Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B9 Rear Boundary Setbacks

Description of non-compliance

Retaining the existing dwelling on Lot 141, requires partial demolition of the dwelling, including the areas at the rear of the dwelling.

The proposed dwelling does not comply with the rear setback control, for the entire length of the dwelling. The non-compliant area of the dwelling equates to 29.3m², representing a variation of 50%. See figure 2 below.

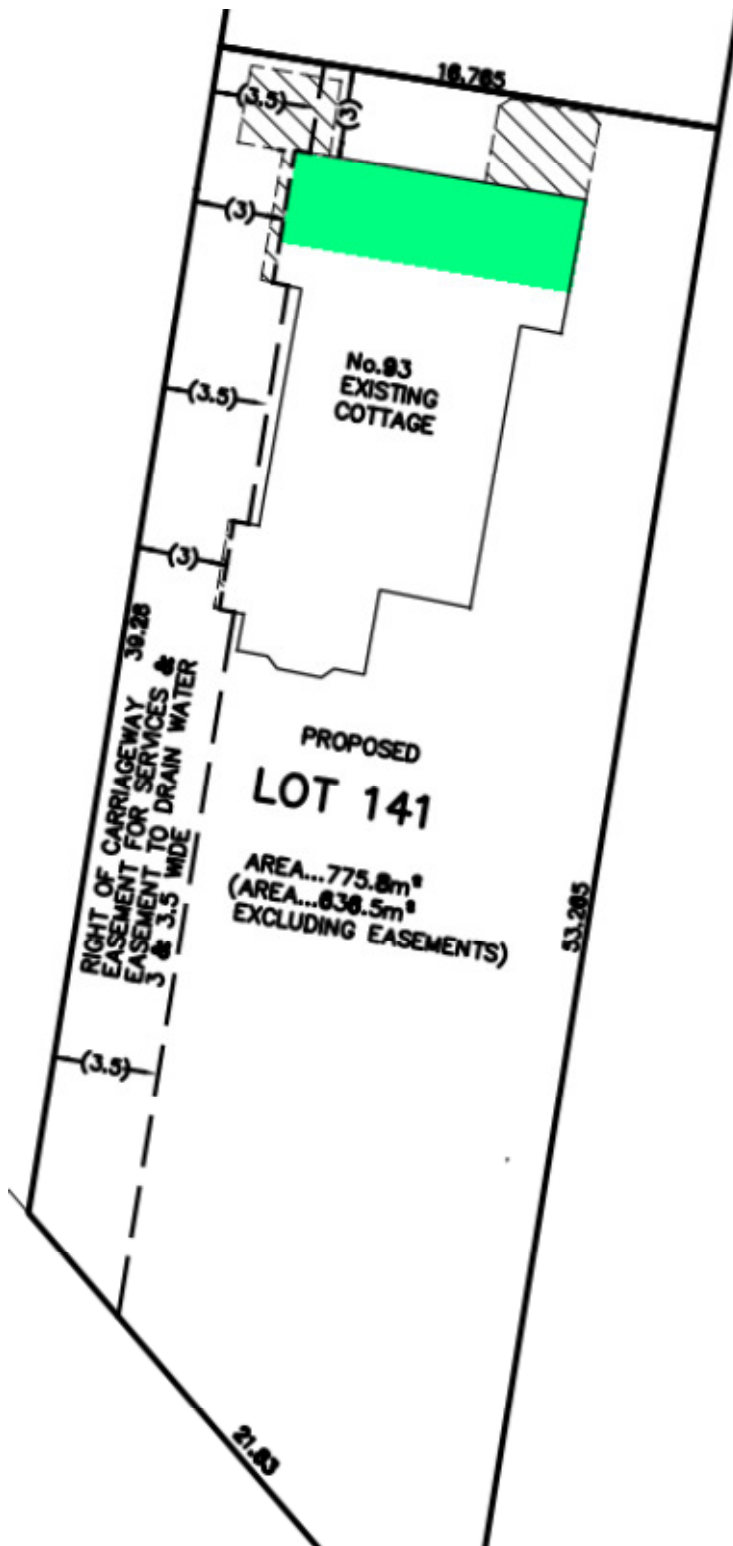


Figure 2. The rear setback non-compliance of the retained dwelling house shown in green.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

The proposed development has been found to comply with the overall Landscape Open Space requirement of 40% by providing 64.3% (498.9m²) for Lot 141, and up to 52.3% (264.7sqm) for Lot 140. Notwithstanding, the rear setback area for Lot 141 achieves an average depth of only 3m, minus the area for the driveway (right of carriageway), which constrains appropriate opportunities for deep soil landscape areas to be maintained.

Therefore, proposal does not satisfy this objective.

- *To create a sense of openness in rear yards.*

Comment:

As noted above, the rear setback area achieves an average depth of only 3m with the driveway (right of carriageway) encroaching this area. The design of the subdivision to retain the existing dwelling creates a 50% encroachment into the rear setback of proposed Lot 141. This creates an undesirable planning outcome, in that an appropriate sense of openness cannot be retained in the rear of the site and a reasonable amenity of the future occupants cannot be achieved.

Therefore, proposal does not satisfy this objective.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The 3m setback is not consistent with the original building footprint of the existing house on the site, and the close proximity of potentially a two storey dwelling on Lot 140 is not consistent with the pattern of surrounding development and the available land area.

The non-complaint 3m rear setback does not provide appropriate area for private open space whilst also providing landscape buffers to ensure adequate privacy is maintained between the two proposed sites.

Therefore, development does not satisfy this objective.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The development, as proposed, is not considered to maintain a consistent visual continuity and pattern of buildings, rear gardens and landscape elements with the neighbouring developments to the east and west.

Therefore, development does not satisfy this objective.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

As noted above, the proposed subdivision creates a non-complaint 3m rear setback for the retained dwelling on Lot 141.

The proposed dwelling for Lot 140, will be sited at a higher level due to the sloping topography of the sites. In order for privacy to be maintained dense planting would need to be provided at ground level, therefore reducing the private open space areas. Therefore, the non-compliant rear setback will restrict use of the setback area in order to provide additional privacy measures.

Therefore, development does not satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	<p>R2 Low Density Residential zone requirements:</p> <p>Proposed new allotments:</p> <p>a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m²</p>	<p>Lot 140</p> <p>a) Minimum width: 16.7m b) Minimum depth: 30.2m; and c) Minimum building area: 208.7m²</p> <p>Lot 141</p> <p>a) Minimum width: 12.7m b) Minimum depth: 34.4; and c) Minimum building area: Existing Dwelling House</p>	<p>Lot 140</p> <p>Yes Yes Yes</p> <p>Lot 141</p> <p>No - Refer to discussion below this table Yes Yes</p>
Access	<p>Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.</p> <p>Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.</p>	<p>A shared access along the right of carriageway parallel to the western boundary of Lot 141 is proposed. The access is non-complaint at 3.0m - 3.5m wide, and no ability to provide the required 0.5m for services due to the current siting of the existing dwelling house to be retained.</p> <p>As a result Councils Development Engineers cannot support the application.</p>	<p>No - Refer to discussion below this table</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.

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
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

	<table><tr><td></td><td>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>		specifications for engineering works (AUSPEC 1)	Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)	Up to 3 lots	0.5	4 or more lots	1.0		
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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><u>Construction</u></p> <p>The proposal is deficient in providing the required details for the On Site Detention and stormwater drainage design, as a result the proposal is not supported by Councils Development Engineers.</p> <p><u>Design</u></p> <p>The creation of Lots will result in the construction of one (new) dwelling as the and the existing dwelling on the site is to be retained with the pool to be demolished.</p> <p>The both lots are constrained by a reduced site area for the zone and the front lot is further constrained by the loss of site width for the right of carriageway.</p> <p>The existing dwelling to be retained is to have areas at the rear demolished to provide a non-compliant 3m rear setback. The retained dwelling is directly adjoining the right of carriageway parallel to the western boundary. This creates a non-compliant width for the right of carriageway, with no ability to provide the required 0.5m for services.</p>	No - Refer to discussion below this table								

		<p>There is no ability to provide additional setbacks and spatial separation without further areas of the dwelling house being demolished.</p> <p>However, with respect to solar access, the location of buildings within the proposed lots would allow for sunlight penetration to the neighbouring lots to the east, west and south. The development of individual dwellings would be capable of complying with Clause D6 of the WDCP 2011.</p>	
Drainage	<p>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>Whilst the required details and plans for the stormwater drainage for the proposed sites was not submitted as part of the application, each proposed allotment is capable of draining to Council's drainage infrastructure on Parkes Road.</p> <p>However, these documentation has not been provided and subsequently, Councils Development Engineers cannot support the application.</p>	No - Refer to discussion table below
Restrictions	<p>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>The proposed allotments are subject to and imposed easements and rights of carriageway to enable drainage and right of access.</p> <p>However, the proposed spatial distance for the right of carriageway, and the driveway gradient is non-compliant with the requirements of Councils controls and Policies.</p>	No - Refer to discussion below this table
Environmentally constrained land	<p>In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk,</p>	<p>The site is not located within flood prone land or subject to environmental constraint.</p>	Yes

	<p>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>		
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 site is not located within bushfire prone land	Yes

Description of non-compliance

The development does not comply and/or is inconsistent with the following components of Clause C1:

- Lot Requirements;
- Access:
- Design and Construction:
- Drainage: and
- Restriction.

With respect to 'Lot Requirements', the development provides for a lot width of 12.7m which is 0.3m below the requirement measured from the east boundary to the edge of the right-of-way (though the building envelope). This equates to a variation of 3.8%.

With Respect to 'access' the development does not provide for the required spatial distance for the shared access along the driveway (right of carriageway). The access is non-compliant with varied widths of 3.0m - 3.5m with no ability to provide the 0.5m for services. Therefore, the non-compliant spatial distance is up to 1.0m.

With respect to 'Design and Construction' the development will result in the construction of one new dwelling, whilst undertaking partial demolition in order to retain the existing dwelling. The dwelling to be retained will display a non-compliant rear setback and will directly adjoin the right of carriageway which could potentially create building bulk and amenity impacts to adjacent land and toward the streetscape. The proposal does not demonstrate an ability to manage spatial separation, due to the non-compliant side setback areas, nor support future development outcomes that are consistent with the DCP and pattern of existing development.

With respect to 'drainage' due to a number of unresolved matters and insufficient information Councils Development Engineers cannot support the proposal.

With respect to 'restriction' a positive covenant cannot be created for the driveway (right of carriageway) as the accessway does not display a required spatial distance, or gradient in order to manage and provide safe vehicle accesses for vehicles.

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 development will result in an additional dwelling in the local area which is not considered to unreasonably impact upon service infrastructure.

However, the provision of one new dwelling and the retention of the existing dwelling will result in a more visually and physically congested (and by implication, more dense) arrangement.

Proposed Lot 141 fronting Parkes Street, whilst compliant in lot size, displays a lot width of 12.7m which is 0.3m below the requirement measured from the west boundary to the edge of the right-of-way. The retained dwelling is directly adjoining the right of carriageway parallel to the western boundary, and displays a non-compliant rear setback of 3m. Therefore, the non-compliance created by retaining the existing dwelling will not provide for a suitable dwelling on the site as there is no ability to provide additional setbacks and spatial separation without further areas of the dwelling house being demolished.

The subdivision development would result in effective lot sizes of 505.8m² and 636.5m² respectively (less access handles) with the degree of variation to the minimum lot size being 15.7%. A review of the subdivision pattern and lot sizes in the local area finds that the proposed lots would not be consistent with other subdivisions nor provide a outcome that is compatible with the predominant subdivision character of the area.

The applicant's written request under clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of clause 4.1 Minimum Subdivision Lot Size development standard has not adequately addressed and demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the case; or that there are sufficient environmental planning grounds to justify the contravention.

Therefore, the development is inconsistent with this objective.

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

Comment:

The reduced site area of Lot 140 will be non-compliant with the minimum Lot size in the zone. The Lot size of 505.8sqm is directly due to the retention of the existing dwelling on Lot 141, and will generate potential issues of spatial separation, building bulk and non-compliant vehicle access as well as unreasonable visual impact on the streetscape.

Therefore, development is not considered to be consistent with this objective.

- *To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.*

Comment:

The subdivision plan indicates that there could be sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site, for Lot 140.

However, due to the reduction in the rear setback and the location of the driveway (right of carriage way) adjoining the dwelling house of Lot 141, sufficient private open space, and landscaping within the rear and western side setback of the Lot 1401 cannot be provided. The proposal does not demonstrate compliant vehicular access widths or gradients, nor complaint spatial distances to allow for utility services.

Therefore, development is considered to be consistent with this objective.

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

Comment:

The proposed subdivision is unlikely to create an unreasonable degree of overshadowing.

The development is considered to be consistent with this objective.

- *To maximise the use of existing infrastructure.*

Comment:

The subdivision is unlikely to create any adverse impact upon the existing infrastructure in and around the site.

The development is considered to be consistent with this objective.

- *To protect the amenity of adjoining properties.*

Comment:

The setback to walls for Lot 140 are considered to be sufficient to address bulk and scale when viewed from the neighbouring property to the east and west.

However, the setback to the walls for the retained dwelling house of Lot 141 are not considered to be sufficient when viewed from the neighbouring property to the west and the new property to be created to the north.

Because of the north-south orientation of site, the proposal is unlikely to create an unreasonable degree of overshadowing (and potentially privacy) given the position of the building envelopes that occupy a central position for Lot 140.

The development is not consistent with this objective.

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

Comment:

The site is not located in or near to bushfire and/or flood prone land.

The development is considered to be consistent with this Objective.

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

C4 Stormwater

Detailed stormwater plans, including an on-site detention (OSD) system design were not provided with the application. Councils Development Engineers have reviewed the plans and cannot support the proposal due to insufficient information in regards to stormwater for the development. The applicant has not provided minimum information for the required OSD nor the Hydraulic Model "Drains" for analysis, which is a vital component of the stormwater assessment.

Therefore, the stormwater concerns warrant refusal of the application for this reason.

D2 Private Open Space

Description of non-compliance

The dwelling house of Lot 140 and 141 will require a total of 35m² of Private Open Space (POS) with minimum dimensions of 3 metres.

Lot 141 proposes a rear setback of only 3m, and displays an encroachment of the driveway (right of carriageway) into the rear setback that further constrains the ability to provide for the required POS in the rear of the site.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure that all residential development is provided with functional, well located areas of private open space.*

Comment:

The existing POS for the retained dwelling house was located at the rear of the site. However the significant reduction of rear setback area has the potential to negatively impact the amenity of the occupants of Lot 141, as the POS is not shielded by the building itself to the potential dwelling house to be located behind, or significantly separated by a wide landscape buffer from adjacent land. It is considered that the private open space area at the rear is not adequately buffered to minimise potential overlooking.

Therefore, the proposal does not satisfy the objective.

- *To ensure that private open space is integrated with, and directly accessible from, the living area of dwellings.*

Comment:

The POS for the existing dwelling house is directly accessible from the communal living room and located at ground floor level at the rear of the building. Therefore, for the POS to be

integrated with the primary living spaces internal re-configurations will need to be undertaken.

Therefore, the proposal does not satisfy this objective.

- *To minimise any adverse impact of private open space on adjoining buildings and their associated private open spaces.*

Comment:

The POS area of proposed Lot 141 is constrained by the 3m rear setback distance and limits the ability to provide appropriate landscaped buffers while providing compliant POS areas.

Therefore, the configuration of the proposed Lots and retaining the existing building does not provide a well located screened/integrated private open space that will protect neighbours from noise and other activity at the rear of the dwelling house and no details are provided regarding any replacement fencing by the applicant to protect viewing / noise toward neighbours.

Therefore, the proposal does not satisfy this objective.

- *To ensure that private open space receives sufficient solar access and privacy.*

Comment:

The POS area at the rear of Lot 141 would receive sufficient solar access to comply with the WDCP on the 21 June.

Therefore, the proposal satisfies this objective.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

CONCLUSION

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

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

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

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

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

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.

The assessment of the application has found that the minimum Lot Size proposed creates fundamental issues with non-compliance of the built form and driveway access requirements rendering the proposal inappropriate and unsuitable for the site, and inconsistent with the surrounding area.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of clause 4.1 Minimum Subdivision Lot Size development standard, and other documentation supporting the application.

The proposed subdivision creates a significant variation of 15.7% to the Minimum Lot size for Lot 140 (505.8sqm), which is not consistent with the pattern and size of adjoining allotments. The retention of the dwelling house has constrained the ability to provide a more balanced Lot size that is reflective of the established subdivision pattern, forming the basis of the reasons for refusal of the Development Application.

The applicant's written request under clause 4.6 of the Warringah Local Environmental Plan 2011, seeking to justify a contravention of clause 4.1 Minimum Subdivision Lot Size development standard, has not adequately addressed and demonstrated that compliance with the standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to vary the standard.

The critical concerns relating to the side setback of the retained dwelling directly adjoining the driveway, and the non-compliant rear setback and driveway accessibility, have not been appropriately addressed and could contribute to unacceptable and unreasonable amenity impacts to future occupants and adjoining properties.

A reconfiguration of the allotments to achieve greater compliance would enable the proposed development to be sited more harmoniously in the streetscape and achieve a better environmental outcome in these circumstances.

No submissions were received in response to the notification of the application.

In summary, the application should be **refused** as the proposal is unsatisfactory in terms of its proposed Minimum Lot Size, design and inconsistency with the surrounding area.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2019/1090 for the Alterations and additions to the existing dwelling and subdivision of 1 lot into 2 on land at Lot 14 DP 12832,93 Parkes Road, COLLAROY PLATEAU, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1 Minimum Subdivision Lot Size of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.
4. 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 B5 Side Boundary Setbacks of the Warringah Development Control Plan.
5. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B9 Rear Boundary Setbacks of the Warringah Development Control Plan.
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 C1 Subdivision of the Warringah Development Control Plan.
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 C4 Stormwater of the Warringah Development Control Plan.
8. 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 D2 Private Open Space of the Warringah Development Control Plan.