

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/1466
<b>Responsible Officer:</b>	Stephanie Gelder
<b>Land to be developed (Address):</b>	Lot 31 DP 8443, 48 Serpentine Crescent NORTH BALGOWLAH NSW 2093
<b>Proposed Development:</b>	Demolition works and subdivision of one (1) lot into two (2) lots
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Jennifer Lynn Wyndham-Wheeler Kenneth Edward Douglas-Hill
<b>Applicant:</b>	Kenneth Edward Douglas-Hill
<b>Application Lodged:</b>	26/09/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	05/10/2022 to 19/10/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.1 Minimum subdivision lot size: 6.83-16.67%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 36,000.00

### EXECUTIVE SUMMARY

This development application seeks consent for Demolition works and subdivision of one (1) lot into two (2) lots.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to a proposed contravention of Clause 4.1 Minimum subdivision lot size development standard of Warringah Local Environmental Plan 2011 (WLEP 2011) by more than 10%.

The required lot size is 600m<sup>2</sup>, and the proposal presents a lot size of 559m<sup>2</sup> for Lot A, and 500m<sup>2</sup> for

Lot B. Therefore, the proposal presents a variation of 6.83% (41m<sup>2</sup>) for Lot A, and a variation of 16.67% (100m<sup>2</sup>) for Lot B.

The 4.6 request for the non-compliance with minimum lot size standard arises from a long wedge shape allotment that maintains a street frontage width consistent with surrounding properties. The proposed lot sizes are otherwise consistent with the established, existing subdivision pattern in the locality, and as such the proposal has demonstrated through a detailed Clause 4.6 written request that variation to the development standard is considered appropriate as compliance with the development standard is unreasonable in the circumstances of the case, and there are sufficient environmental planning grounds to justify contravening the development standard.

Concerns raised in the one (1) objection predominantly relates to the request for a Dilapidation Report prior to the excavation of future garages. As the proposal is for the demolition works and subdivision of one (1) lot into two (2) lots, there are no excavation works as part of this application. Therefore, the request for a Dilapidation Report is not required under this Development Application.

Critical assessment issues included Clause 4.1 Minimum subdivision lot size of WLEP 2011. The variation to Clause 4.1 Minimum subdivision lot size of WLEP 2011, has been addressed under Clause 4.6 Exceptions to development standards of WLEP 2011 contained within this report.

This report concludes with a recommendation that the NBLPP grant approval to the development application, subject to recommended conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal comprises of the following works:

- Demolition of existing dwelling house; and
- Subdivision of one (1) lot into two (2) lots.

## **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 Development Control Plan - C1 Subdivision

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 31 DP 8443 , 48 Serpentine Crescent NORTH BALGOWLAH NSW 2093
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the north-western side of Serpentine Crescent.</p> <p>The site is irregular in shape with a frontage of 27.415 metres along Serpentine Crescent and a maximum depth of 62.090 metres. The site has a surveyed area of 1059m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone from WLEP 2011 and accommodates a dwelling house currently on the site.</p> <p>The site slope from the rear north-western corner downwards across the site to the north-eastern front corner over approximately 7 metres.</p> <p>The site contains grass areas, palms, trees, plantings, and rock outcrops. There are no details of any threatened species on the subject site.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by one and two storey dwelling houses varying in architectural style and design.</p>

Map:



## SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

### DA2021/2010

Development Application for Demolition works and construction of a dwelling house including a swimming pool and a detached secondary dwelling.

Approved on 13 January 2022.

## APPLICATION HISTORY

Following the preliminary assessment of the application, additional information was requested from Council's Water Management Officer who requested further information in relation to compliance with Northern Beaches Council Water Management for Development Policy. Subsequently, the applicant provided amended Stormwater Plans that demonstrated compliance with the Northern Beaches Council Water Management for Development Policy. The amended Stormwater Plans did not alter the environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

## 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	There are no current draft environmental planning instruments.

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested from Council's Water Management Officer who requested further information in relation to compliance with Northern Beaches Council Water Management for Development Policy. Subsequently, the applicant provided amended Stormwater Plans that demonstrated compliance with the Northern Beaches Council Water Management for Development Policy.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 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 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 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>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in</p>

Section 4.15 Matters for Consideration	Comments
	the locality considering the character of the proposal.  (iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 05/10/2022 to 19/10/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Carolynne Pitt	56 Serpentine Crescent NORTH BALGOWLAH NSW 2093

The following issues were raised in the submissions:

- ***Dilapidation Report***

The above issues are addressed as follows:

- ***Dilapidation Report***

The submission raised concerns that a Dilapidation Report should be required prior to any works commencing. Specific concern is raised in relation to vibrations during excavation for garages.

Comment:

As the proposal is for the demolition works of the existing dwelling, and subdivision into two allotments, the proposal does not include any excavation works. As such, a condition for a Dilapidation Report is not required under this Development Application. The demolition itself would not warrant the need for dilapidation reports.

Concluding Comment:

In summary, the concern raised has been addressed and does not warrant the refusal of the proposed Development Application.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><b><i>Supported, without conditions</i></b></p> <p>The proposed subdivision from one torrens title allotment to two torrens title attlotments in considered against Warringah Development Control Plan (WDCCP) clause C1 Subdivision.</p> <p>Indicative site layout plans are submitted and noted.</p> <p>The objectives of C1, relative to landscape outcomes includes</p> <ul style="list-style-type: none"><li>• To limit the impact of new development and to protect the natural landscape and topography.</li><li>• 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.</li></ul> <p>On review of the site, limited existing vegetation occurs upon the property with no prescribed trees present that would present restrictions to the proposed subdivision. Any future dwelling development application upon either allotment, should the subdivision application be approved, shall comply with the relevant WDCCP landscape controls including 40% landscape area under clause D1 and protection of valuable trees under clause E1 including within adjoining properties.</p> <p>Landscape Referral raise no concerns with the subdivision application specific to landscape outcomes.</p>
NECC (Development Engineering)	<p><b><i>Supported, subject to conditions</i></b></p> <p>No objections to the proposed two lot subdivision subject to conditions. It is also noted that a concept plan detailing the provision of on site stormwater detention (OSD) has been submitted. OSD will only be required with any subsequent development application for houses.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p><b><i>Supported, without conditions</i></b></p> <p>The property is not identified as flood affected.</p>
NECC (Water Management)	<p><b><i>Supported, subject to conditions</i></b></p>

Internal Referral Body	Comments
	<p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Northern Beaches Water Management for Development Policy (WM Policy); and</li> <li>• Relevant LEP and DCP clauses.</li> </ul> <p>The proposal is a subdivision resulting in the creation of two (2) lots where the total post-development impervious area of the new lots exceeds 40% of the site area. This triggers section 4.1 Stormwater Quality and Hydrology of the Northern Beaches Council Water Management for Development Policy. Table 5 – General Stormwater Quality Requirements of the Policy sets out the water quality standards that must be met by the proposed subdivision.</p> <p>The proposed water quality system is aligned with Northern Beaches Council Water Management for Development Policy.</p> <p>The proposal is acceptable subject to recommended engineering conditions.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b><i>Supported, subject to conditions</i></b></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a recommended condition of consent.</p>
Aboriginal Heritage Office	<p><b><i>Supported, subject to conditions</i></b></p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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



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

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

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

### **SEPP (Transport and Infrastructure) 2021**

#### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

#### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

### **SEPP (Resilience and Hazards) 2021**

#### **Chapter 4 – Remediation of Land**

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

### **Warringah Local Environmental Plan 2011**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	Lot A: 600m <sup>2</sup>	Lot A: 559m <sup>2</sup>	6.83% (41m <sup>2</sup> )	No
	Lot B: 600m <sup>2</sup>	Lot B: 500m <sup>2</sup>	16.67% (100m <sup>2</sup> )	No

### Compliance Assessment

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

### Detailed Assessment

#### **4.6 Exceptions to development standards**

##### Description of non-compliance:

Development standard:	Minimum Subdivision Lot Size
Requirement:	600m <sup>2</sup>
Proposed:	Lot A: 559m <sup>2</sup> Lot B: 500m <sup>2</sup>
Percentage variation to requirement:	Lot A: 6.83% (41m <sup>2</sup> ) Lot B: 16.67% (100m <sup>2</sup> )

##### 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 has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

*(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 required area = 600m<sup>2</sup>; the proposed areas = 559m<sup>2</sup> and 500m<sup>2</sup>. The variation in site area equates to 41m<sup>2</sup> and 100m<sup>2</sup>, or 6.8% and 16.6% for each respective lot.*

*Sufficient environmental grounds exist to justify contravening the development standard, in this case. In relation to the extent of non-compliance and the form of development, it is noted that:*

- 1. The variation to the minimum lot size control is relatively minor given the lot sizes in the locality. The variation in lot size will not be appreciated from either the public or private domains, and does not lead to any environmental impact beyond that which would be contemplated by a dwelling house on a compliant site.*
- 2. The vast number of other lots in the area of a similar width, and having a smaller lot area.*
- 3. This site easily complies with the DCP minimum building area, while also complying with all DCP setbacks and the lot width control.*

*A development proposal that was forced to be compliant with the standard fails to recognise that:*

- The proposal is consistent with the established lot sizes, widths and subdivision patterns in the area (see Figure 1);*
- The variation in area is imperceptible to any passer-by, and is the result of the narrowing of the lot at the rear, which is not readily visible from the street. The proposed lot frontages are consistent with other lots nearby.*
- The future form and scale of the new homes will be consistent with the established character of the local neighbourhood; and*
- There are no significant environmental benefits that would result from strict compliance.”*



**Figure 1. Comparable lot sizes less than 600m<sup>2</sup> shown in red (Extract from Applicant's Clause 4.6 Report)**

It is agreed that the reasons provided by the applicant demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances. Furthermore, sufficient planning grounds to justify contravening the development standard have been articulated appropriately. Therefore, the applicants written request has demonstrated that variation to Clause 4.1 Minimum subdivision lot size of Warringham Local Environmental Plan 2011 is supportable in this circumstance.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has 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:

The proposal protects the residential character by providing a suitable subdivision of land that is consistent with the existing pattern, size and configuration of existing lots in the locality.

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

Comment:

The proposal is located in a R2 Low Density Residential zone and is surrounded by residential development. Therefore this objective is not relevant.

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

Comment:

The subject site is not located in a rural locality. Therefore this objective is not relevant.

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

Comment:

The application proposes two allotments that will be used for low density residential land uses. It is not considered that the subject site is of any environmental significance.

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

Comment:

The site is not located on Bush Fire Prone Land, and as such this objective is not relevant.

***(f) to protect and enhance existing remnant bushland.***

Comment:

The site does not obtain bushland. Therefore this objective is not relevant.

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

Comment:

The proposal has been reviewed by the Aboriginal Heritage Office whom are supportive of the proposal. As such, the proposal does not obtain significant natural landscape features.

***(h) to manage biodiversity.***

Comment:

The proposal will not result in unreasonable impacts to biodiversity.

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

Comment:

The proposal has been reviewed by Council's Water Management Officer who is supportive of the proposal subject to conditions. Therefore, the proposal will provide for appropriate stormwater management and sewer infrastructure.

## **Zone objectives**

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

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

Comment:

The proposal will result in two allotments that will allow for additional housing to meet the needs of the community within a low density residential environment.

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 is likely to retain the existing land uses for dwelling houses as detailed in the accompanied Indicative Plans, subject to a future Development Application, that will provide housing to meet the 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:

The proposal has demonstrated through the Indicative Landscape Area Plans, that the proposed allotments will ensure low density environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah. Furthermore, Council's Landscape Officer has reviewed the proposal and is supportive of the current proposal subject to a future Development Application.

It is considered that the development satisfies this objective.

#### Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary 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 consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Minimum Subdivision Lot Size Development Standard is assumed by the Local Planning Panel.

#### **Warringah Development Control Plan**

##### Built Form Controls

There are no Built Form Controls relevant to this Development Application, as the proposal is for Demolition works and subdivision of one (1) lot into two (2) lots. However, the provided Indicative Building Area Plan demonstrates the ability to comply, subject to a future Development Application.

Built Form Control	Requirement	Proposed	% Variation*	Complies
B5 Side Boundary Setbacks	0.9m (North-East)	Lot A: 1.0m Lot B: 0.9m	- -	Yes Yes
	0.9m (South-West)	Lot A: 0.9m Lot B: 0.9m	- -	Yes Yes
B7 Front Boundary Setbacks	6.5m (South-East)	Lot A: 6.5m Lot B: 6.5m	- -	Yes Yes
B9 Rear Boundary Setbacks	6m (North-West)	Lot A: 28.3m Lot B: 26.3m	- -	Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	Lot A: 40% (223.6m <sup>2</sup> ) Lot B: 40% (200m <sup>2</sup> )	Lot A: 60% (335m <sup>2</sup> ) Lot B: 51% (255m <sup>2</sup> )	- -	Yes Yes

##### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C1 Subdivision	No	Yes
C4 Stormwater	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

### Detailed Assessment

#### **C1 Subdivision**

Component	Requirement	Proposed	Compliant
<b>Lot requirements</b>	<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: 150m<sup>2</sup></p>	<p><u>Lot A:</u> a) Width: Front: 13.6 metres / Rear: 6.50 metres b) Depth: Eastern boundary 59.02 metres / Western boundary 62.09 metres; and c) Building area: 347m<sup>2</sup></p> <p><u>Lot B:</u> a) Width: Front: 13.81 metres / Rear 5.69 metres b) Depth: Eastern boundary 57.98 metres / Western boundary 59.02 metres; and c) Building area: 296m<sup>2</sup></p>	<p><b>No</b> Yes Yes</p> <p><b>No</b> Yes Yes</p>
<b>Access</b>	<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>Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for</p>	<p>The proposal does not include any construction works, and therefore motor vehicle access is not required under this proposal. Notwithstanding, the proposed lots have direct access to the existing public Road along Serpentine Crescent and have demonstrated proposed driveways in the Indicative Building Area Plan.</p> <p>In addition, Council's Development Engineer has reviewed the application and raised no objection to approval, subject to conditions.</p>	Yes

transitions at a minimum length of 1.5 metres 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 30 metres or more in length require a passing bay to be provided every 30 metres. To provide a passing bay, driveways shall be widened to 5.0 metres for a distance of at least 10 metres.

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 specifications for engineering works

	<table><tr><td></td><td>(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>		(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		
	(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										
<b>Design and construction</b>	<p>All roads, rights of carriageway, drainage design and construction is to be in accordance with Council’s policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council’s Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards.</p> <p>Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.</p>	<p>The proposal has been reviewed by Council's Development Engineer who raises no objections to the approval, subject to recommended conditions.</p> <p>The subdivision results in lots orientated north-west to south-east, and as such appropriate solar access will be provided for future dwellings.</p>	Yes								
<b>Drainage</b>	<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.</p>	<p>The proposal has been reviewed by Council's Development Engineer, and Council's Water Management Officer whom raise no objections to the approval, subject to recommended conditions.</p>	Yes								

	Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.		
<b>Restrictions</b>	Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.	The proposal has been reviewed by Council's Development Engineer, who raises no objections to the approval, subject to recommended conditions.	Yes
<b>Environmentally constrained land</b>	In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment.  Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	The site is not identified as being environmentally constrained land as the site does not obtain constraints such as flooding, tidal inundation, threatened species, landslip risk, or bush fire prone land.	Yes
<b>Bushfire</b>	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 subject site is not located in bush fire prone land. Therefore this component is not relevant.	Yes

#### Description of non-compliance

The required minimum lot width is 13 metres, however the proposed rear lot width Lot A is 6.50 metres and the proposed width for Lot B is 5.69 metres, presenting in a numerical non-compliance with the requirements. It is important to note that the proposed front lot width of Lot A is 13.6 metres, and the proposed front lot width of Lot B is 13.81 metres, demonstrating compliance with the lot width requirement and therefore at the building line, more than sufficient width exists for a dwelling with a living room, entry and garage to present to the street.

In this instance the proposed variation to the lot width has been assessed against the objectives of the control.

#### Merit consideration

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

- ***To regulate the density of development.***

Comment:

The proposal is considered to be consistent with the existing subdivision pattern located along Serpentine Crescent, as evident to the sites located directly to the south-west. It is therefore considered that the proposed subdivision is an acceptable outcome in relation to regulating the density.

- ***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 proposed lots obtain sufficient area for landscaping, private open space, drainage, utility services, and vehicular access to and from the site as detailed by the Indicative Building Area Plan and Indicative Landscape Area Plan. Furthermore, the proposal has been reviewed by Council's Landscape Officer, and Development Engineer who are supportive of the proposal.

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

Comment:

The proposed subdivision results in lots orientated north-west to south-east that is considered to provide opportunity for acceptable solar access subject to a future Development Application.

- ***To maximise the use of existing infrastructure.***

Comment:

The proposed subdivision of two lots will utilise the existing infrastructure, including services.

- ***To protect the amenity of adjoining properties.***

Comment:

It is considered that there is adequate scope for a appropriately designed, and compliant dwelling house on each of the proposed lots that will protect the amenity of adjoining properties.

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

Comment:

The site is identified within Area B of the Land Slip Risk Map according to WLEP 2011, and the proposal is accompanied with a Preliminary Geotechnical Assessment outlining the proposed development will not result in an unacceptable landslide risk. The site is not subject to bushfire or flood risk.

In summary, despite the numerical non-compliance with the rear width of proposed Lot A and Lot B, the proposed development is consistent with the relevant objectives of Clause C1 Subdivision of Warringah Development Control Plan 2011, and as such the variation is supportable.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

## **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

Council is satisfied that:

1) 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 has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

## **PLANNING CONCLUSION**

This proposal, for Demolition works and subdivision of one (1) lot into two (2) lots has been referred to

the Northern Beaches Local Planning Panel (NBLPP) due to a proposed contravention of Clause 4.1 Minimum subdivision lot size development standard of Warringah Local Environmental Plan 2011 (WLEP 2011) by more than 10%.

The concern raised in the objection has been addressed and resolved, noting that the request for a Dilapidation Report is not required under this application as no construction works are proposed.

The critical assessment issues relate to the variation of Clause 4.1 Minimum subdivision lot size of WLEP 2011. The Clause 4.6 variation request for the non-compliance with Minimum subdivision lot size development standard arises from the proposed lot sizes to be 559m<sup>2</sup> for Lot A, and 500m<sup>2</sup> for Lot B. The proposed lot sizes are consistent with the existing subdivision pattern in the locality, and as such the proposal has demonstrated that variation to the development standard is considered appropriate as compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and there are sufficient environmental planning grounds to justify contravening the development standard.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary Clause 4.1 Minimum Subdivision Lot Size development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/1466 for Demolition works and subdivision of one (1) lot into two (2) lots on land at Lot 31 DP 8443, 48 Serpentine Crescent, NORTH BALGOWLAH, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Subdivison Site Analysis Plan - A001, Rev A	24 August 2022	Studio Haptic
Draft Subdivison & Indicative Building Plan - A002, Rev A	24 August 2022	Studio Haptic

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Details, Notes & Legend - D1, Rev E	5 December 2022	Quantum Engineers
Indicative Stormwater Drainage - D2, Rev E	5 December 2022	Quantum Engineers
Sediment Control Plan - D3, Rev E	5 December 2022	Quantum Engineers
Sediment Details - D4, Rev E	5 December 2022	Quantum Engineers

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Geotechnical Report	12 August 2022	White Geotechnical Group

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

<b>Waste Management Plan</b>
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Drawing No/Title.	Dated	Prepared By
Waste Management Plan	9 September 2022	Ken Douglas-Hill

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Aboriginal Heritage Office	Referral - Aboriginal Heritage Office - 48 Serpentine Crescent North Balgowlah	17 November 2022
Ausgrid	Ausgrid Referral Response	30 September 2022

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and

- B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
  - A. the name of the owner-builder, and
  - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

#### 4. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
  - 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 8.00 am to 1.00 pm inclusive on Saturday,
  - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
- Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
- (i) Swimming Pools Act 1992
  - (ii) Swimming Pools Amendment Act 2009
  - (iii) Swimming Pools Regulation 2018
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

## FEES / CHARGES / CONTRIBUTIONS

### 5. Security Bond

A bond (determined from cost of works) of \$5,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

Reason: To ensure adequate protection of Council's infrastructure.

## **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE SUBDIVISION WORKS CERTIFICATE**

### **6. Subdivision Works Certificate**

A Subdivision Works Certificate is to be approved by Certifier for the provision of engineering works.

Engineering plans for the subdivision works within this development consent are to be submitted to the Certifier for approval under Section 6.13 of the Environmental Planning and Assessment Act 1979.

Civil Engineering plans for the subdivision works are to be designed in accordance with the Council's specification for engineering works – AUS-SPEC #1. The plans shall be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering. The design must include the following information:

1. Stormwater Quality System- Bioretention; and
2. Stormwater outlets in Serpentine Crescent.

The Subdivision Works Certificate must be supported by engineering plans, calculations, specification or any certification relied upon.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specifications.

### **7. Utilities Services**

Prior to the issue of the Subdivision Works Certificate, the Applicant is to obtain the following:

- (a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
- (b) Evidence that notification has been received from a utility authority that, requirements for the development can be provided.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Subdivision Works Certificate.

Reason: To ensure that services have been provided as required by this Consent.

### **8. Compliance with standards (Demolition)**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to Council prior to the commencement of demolition works.

Reason: To ensure the development is constructed in accordance with appropriate standards.

### **9. Surrender of Consent**

The applicant shall surrender Development Consent No.DA2021/2010 to Council in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Subdivision Works Certificate.

Reason: To prevent inconsistencies between consent applying the site, with reference to Sections 4.17 and 4.63 of the *Environmental Planning and Assessment Act 1979* and Clause 68 of the *Environmental Planning and Assessment Regulation 2021*.

## CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

### 10. Road Reserve

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

### 11. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

### 12. Demolition Works - Asbestos

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

### 13. Waste Management During Development

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

14. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Planning and Environment.

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the Department of Planning and Environment.

Reason: Aboriginal Heritage Protection.

**CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE**

15. **Provision of Services for Subdivision**

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

16. **Services**

The Applicant shall ensure all utilities/services and street lighting is installed. The Applicant is to submit a Certification stating the above requirement has been complied with by the relevant authority(s) and/or authorised contractor.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure services have been provided in accordance with the relevant authorities requirements.

17. **Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and

building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure compliance with the statutory requirements of Sydney Water.

18. **Easement for Services**

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

19. **Release of Subdivision Certificate**

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

20. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

21. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure proper management of land.

22. **Scope of Works**

This consent is for subdivision only and does not include development consent for the erection of a dwelling on any of the lots created. A separate and further development application will be required for residential use of the land and the erection of a dwelling house on either lot.

Reason: To guide future development to limit amenity impacts on adjacent dwellings



