

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2018/1192
<b>Responsible Officer:</b>	Kent Bull
<b>Land to be developed (Address):</b>	Lot 1 DP 1069339, 125 Garden Street NORTH NARRABEEN NSW 2101
<b>Proposed Development:</b>	Strata Subdivision
<b>Zoning:</b>	R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Aileen Frances Kelly Peter Kim Kelly Ludivine Aurore Kelly
<b>Applicant:</b>	CMS Surveyors Pty Ltd
<b>Application lodged:</b>	11/07/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	07/08/2018 to 23/08/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 0.00

### 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

Pittwater Local Environmental Plan 2014 - 4.2A Minimum subdivision lot size for strata plan schemes in certain rural, residential and environment protection zones

Pittwater Local Environmental Plan 2014 - 7.10 Essential services

Pittwater 21 Development Control Plan - A1.7 Considerations before consent is granted

Pittwater 21 Development Control Plan - B3.2 Bushfire Hazard

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 1069339 , 125 Garden Street NORTH NARRABEEN NSW 2101
<b>Detailed Site Description:</b>	The site is known as 125 Garden Street, North Narrabeen and is legally referred to as Lot 1 DP 1069339. The site is regular in shape with a total area of 916.2m <sup>2</sup> . Primary vehicular and pedestrian access is gained via the 15.32m wide frontage which faces the northern eastern side of Garden Street. The site contains a two storey dual occupancy that is located centrally. The slope of the site is 8.3% and falls from the road frontage to the rear boundary. Either side adjoining the site are low density dwellings and the Narrabeen Lagoon catchment is located to the rear.

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:

- N0857/02 - Council approved the construction of an attached dual occupancy.
- DA2018/0094 - A Development Application was lodged for proposed strata subdivision of an existing dual occupancy, However, due to issues with building compliance, the Applicant withdrew the application.
- BC2018/0069 - Council certified the additional works to N0857/02 comprising of awnings over 4 timber decks, laundry moved to garages, enclosure of decks and extension of two rear decks.

## PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the strata subdivision of an existing dual occupancy to create two (2) "Strata Title" parcels.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

## 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	Pittwater 21 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&amp;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>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 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 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</p>

Section 4.15 Matters for Consideration'	Comments
	<p>No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 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 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;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><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</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 Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered un/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

Refer to Control B3.2 (Bushfire Hazard) of the Pittwater 21 DCP for discussion.

## 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Ms Jeanne Ann Young	127 Garden Street NORTH NARRABEEN NSW 2101

The following issues were raised in one (1) submission and each have been addressed below:

- Landscaping and Building compliance with Consent no. N0857/02  
Comment: See Site History for discussion.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No Objections to proposed Strata Subdivision application subject to standard conditions.
NECC (Bushland and Biodiversity)	Council's Bushland and Biodiversity section raise no objections to the Development Application.
NECC (Development Engineering)	The proposal is to strata subdivide an existing dual occupancy development. No works are proposed and this style of subdivision is assessed by Building Compliance. No objection to approval with no conditions of consent recommended.
NECC (Riparian Lands and Creeks)	As this is a paper subdivision only, there are no impacts to water quality or riparian/wetland areas. The application is recommended for approval.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed strata subdivision is located above the residential Flood Planning Area and is not considered to increase flood risk. No flood related development controls applied.
Strategic and Place Planning	HERITAGE COMMENTS



Internal Referral Body	Comments		
(Heritage Officer)	Discussion of reason for referral		
	This application has been referred to heritage as it adjoins a heritage item		
	<b>Item – Warriewood Wetland</b>		
	Details of heritage items affected		
	Details of these items, as contained within the Pittwater Heritage Inventory, is:		
	<b>Warriewood Wetland</b>		
	<u>Statement of Significance</u>		
	Warriewood Wetland is the largest remaining area of sandplain wetland in northern Sydney (DECC 2008). It supports a number of vegetation communities listed as endangered under the Threatened Species Conservation Act 1995 (NSW) and provides habitat for many fauna species including several listed under state and federal legislation.		
	<u>Physical Description</u>		
	At 26 hectares, the Warriewood Wetland is the largest remaining area of sand plain wetland in the northern Sydney area. It provides a variety of habitats for local fauna and at the same time plays a vital role in flood mitigation, nutrient recycling and filtering sediments. The wetland contains several Endangered Ecological Communities.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
RAIA Register of 20th Century Buildings of Significance	No		
Other	No		
Consideration of Application			
The proposal seeks consent for the strata subdivision of a dual occupancy. The Warriewood Wetlands are located to the rear of the property. As there is no physical works proposed, there is considered to be no impact upon the heritage item or its significance. The proposal can be supported by Heritage.			

Internal Referral Body	Comments
	<p><b>Consider against the provisions of CL5.10 of PLEP.</b></p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No.</p> <p><b>Further Comments</b></p> <p>COMPLETED BY: Brendan Gavin, Strategic Planner</p> <p>DATE: 22 August 2018</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)

Nil

### Pittwater Local Environmental Plan 2014

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 lot sizes for dual occupancies	800sqm	Lot size: 916.2sqm	N/A	Yes
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#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision - consent requirements	Yes
4.2A Minimum subdivision lot size for strata plan schemes in certain rural, residential and environment protection zones	Yes
5.10 Heritage conservation	Yes
7.3 Flood planning	Yes
7.10 Essential services	Yes

#### Detailed Assessment

#### **4.2A Minimum subdivision lot size for strata plan schemes in certain rural, residential and environment protection zones**

The proposed strata subdivision of the existing dual occupancy is not subject to the provisions of this clause, as the site was subject to a development consent granted on the 6 May 2003 for the construction of an attached dual occupancy.

#### **7.10 Essential services**

No change to the existing services are proposed.

#### **Pittwater 21 Development Control Plan**

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.11 North Narrabeen Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
C4.5 Subdivision - Utility Services	Yes	Yes

#### Detailed Assessment

#### **A1.7 Considerations before consent is granted**



The Survey Plan Ref No. 77345 prepared by Rygate Surveyors on the 25th February 2016 and an site inspection carried out on the 4th September 2018, identified an existing timber cabin that encroaches on community land within the Warriewood Wetlands. A search of Council's records identified no evidence of an approval issued for the structure. Internal advise was subsequently received by Council's Officers within Property, Natural Environmental & Climate Change and Environmental Compliance. These divisions did not support the utilisation of public land for private purposes and would not support the approval of illegal structures. It is noted that the application does not propose any works upon this structure associated with the encroachment, therefore the issue has been noted and relayed to Council's Environmental Compliance team for further investigation into the matter. The works associated with the timber cabin do not apply to this consent.

### **B3.2 Bushfire Hazard**

The existing dual occupancy development was approved by Council on the 6 May 2003 under consent no. N0857/02. The NSW Rural Fire Service were referred during that assessment had no objections to the proposal and the development was conditioned as per Planning for Bushfire Protection (2001) and Australian Standard 3959 "Construction of Buildings in bushfire-prone areas".

### **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.

### **POLICY CONTROLS**

#### **Pittwater Section 94 Development Contributions Plan**

### **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;
- Pittwater Local Environment Plan;
- Pittwater 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

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1192 for Strata Subdivision on land at Lot 1 DP 1069339, 125 Garden Street, NORTH NARRABEEN, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

##### a) Approved Plans

<b>Plans - Endorsed with Council's stamp</b>	
<b>Drawing No.</b>	<b>Dated</b>
Plan Showing Proposed Strata Subdivision (Location Plan) Sheet 1 of 2	29 November 2017
Plan Showing Proposed Strata Subdivision (Floor Plan) Sheet 2 of 2	29 November 2017

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. (DACPLB01)

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

#### 2. **Matters to be satisfied prior to the issue of Subdivision Certificate:**

1. The applicant is to lodge an application for a Subdivision Certificate with Council or an accredited certifier. The Subdivision Certificate is to be obtained prior to lodgement of the plans with the Land Titles Office.

Note: In the case of Strata Subdivision Plans the Subdivision Certificate may also be issued by

an accredited certifier.

2. Appropriate easements are to be created where gas meters, electricity meter boards, water meters boards, service lines or drainage lines pass through private property other than the lot which they benefit. These are created through the registration of the Plan of Subdivision.

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

**Signed**




**Kent Bull, Planner**

The application is determined on 17/10/2018, under the delegated authority of:




**Matthew Edmonds, Manager Development Assessments**




























**ATTACHMENT A**



Notification Plan	Title	Date
 2018/462866	Plan - Notification	14/12/2017

**ATTACHMENT B**

Notification Document	Title	Date
 2018/498165	Notification Map	07/08/2018

## ATTACHMENT C

Reference Number	Document	Date
 2018/462865	Report - Statement of Environmental Effects	04/12/2017
 2018/462876	Plans - Subdivision	04/12/2017
 2018/462866	Plan - Notification	14/12/2017
 2018/462868	Plans - Site Analysis	22/01/2018
 2018/462863	Owners Consent	22/01/2018
 2018/462867	Building Certificate	05/07/2018
 DA2018/1192	125 Garden Street NORTH NARRABEEN NSW 2101 - Development Application - Subdivision	11/07/2018
 2018/448711	DA Acknowledgement Letter - CMS Surveyors Pty Ltd	13/07/2018
 2018/448988	Development Application Form	13/07/2018
 2018/448998	Applicant Details	13/07/2018
 2018/455202	Plan - Survey	17/07/2018
 2018/455204	Building Certificate	17/07/2018
 2018/462880	Plans - Master Set	20/07/2018
 2018/502964	Building Assessment - Fire and Disability upgrades - Assessment Referral - DA2018/1192 - 125 Garden Street NORTH NARRABEEN NSW 2101	06/08/2018
 2018/498148	ARP Notification Map	07/08/2018
 2018/498154	DA Acknowledgement Letter (not integrated) - CMS Surveyors Pty Ltd	07/08/2018
 2018/498165	Notification Map	07/08/2018
 2018/498169	Notification Letter - 11	07/08/2018
 2018/499687	DA2018/1192 - 125 Garden Street, North Narrabeen	07/08/2018
 2018/533316	Heritage Referral Response - DA2018/1192 - 125 Garden Street, North Narrabeen	14/08/2018
 2018/536227	Online Submission - Young	22/08/2018
 2018/537212	Building Assessment Referral Response	23/08/2018
 2018/543395	Notification Sign - DA2018/1192 - 125 Garden Street North Narrabeen	27/08/2018
 2018/545986	Natural Environment Referral Response - Riparian - 125 Garden St	28/08/2018
 2018/559826	Natural Environment Referral Response - Biodiversity	29/08/2018
 2018/587467	Natural Environment Referral Response - Flood	11/09/2018
 2018/631907	RE: Final OC for Exisitng Dual Occ DA2018/1192 - 125 Garden Street NORTH NARRABEEN	13/09/2018

	2018/657664	Development Engineering Referral Response	15/10/2018
	2018/664828	Stamped Plans	17/10/2018