

---

**SUBJECT: N0530/15 – 7 TRENTWOOD PARK, AVALON BEACH NSW 2107  
(Lot 1 DP 202857)**

**Subdivision of one lot into three, demolition of existing detached garage and extension of existing access road to provide access to new lots.**

---

**SUMMARY OF RECOMMENDATION:**

**REFUSAL**

---

<b>REPORT PREPARED BY:</b>	Cheryl Williamson
<b>APPLICATION SUBMITTED ON:</b>	9 December 2015
<b>APPLICATION SUBMITTED BY:</b>	Vaughan Milligan Development Consulting Pty Ltd PO Box 49 Newport NSW 2106
<b>OWNER(S):</b>	Margot C Dargaville James B Dargaville
<b>ESTIMATED COST OF WORKS:</b>	\$102,885
<b>DETERMINATION LEVEL:</b>	Principal Officer

---

## **1.0 SITE DETAILS**

The site is known as 7 Trentwood Park, Avalon Beach and has a legal description of Lot 1 in Deposited Plan 202857. The site is irregular in shape with an area of approximately 5,417m<sup>2</sup>. The site is located at the end of the cul de sac of Trentwood Park, with a vehicular and pedestrian access from the south western side. The site experiences a decrease in level from west to east of approximately 39 metres, resulting in a 30.5% or 17 degree slope. The site is currently occupied by a single dwelling with detached garage. Surrounding land uses are also primarily residential in nature, set with a mature landscaped setting.

## **2.0 PROPOSAL IN DETAIL**

The application seeks consent for:

- The subdivision of the site from one lot into three lots
- The demolition of the existing garage to enable access to the new rear lot
- Extension of the existing access road to enable access to the new rear lot

## **3.0 STATUTORY AND POLICY CONSIDERATIONS**

### Zoning and permissibility

The site is zoned E4: Environmental Living under Pittwater Local Environmental Plan 2014. Dwelling houses and ancillary residential development are permissible with consent in this zone.

Objections have been received which consider that the development is inconsistent with the E4 zone objectives. These objectives require that new development is of a low impact, integrates with the existing landscape and retains and enhances vegetation and wildlife corridors. The application documentation does not provide sufficient detail relating to the extent of tree loss likely to be required as a result of future building works, and the tree removal and access road requirements specified by the NSW Rural Fire Service, however it is apparent that this would be extensive. Without being able to understand the full extent and nature of the trees and vegetation required to be removed, it cannot be said that the development is consistent with the zone objectives.

### Relevant state, regional and local policies and instruments

- Environmental Planning and Assessment Act, 1979 (the Act)
- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
  - Acid Sulphate Soils Map - Area 5
  - Biodiversity Map
  - Geotechnical Hazard Map – Hazard H1
  - Height of Buildings Map – 8.5 metres
  - Lot Size Map – Min. 700m<sup>2</sup>
- Pittwater 21 Development Control Plan (P21 DCP)
  - Avalon Beach Locality
  - Bushfire prone
  - Vicinity of heritage
  - Land mapped as Flora and Fauna Conservation Area – Category 1
  - Area of habitat mapped as Flora and Fauna Conservation Area – Category 2
- Geotechnical Risk Management Policy for Pittwater

### Variation of development standards

The application does not seek the variation of a development standard.

## **4.0 BACKGROUND**

### History of the subject site

Development application N0259/14 sought the subdivision of the site from one lot into five lots. During the course of the application the proposal was amended to seek subdivision from one lot into three lots, however the application was subsequently withdrawn following concerns raised by Council.

### Subject application

The subject development application was lodged with Council on 9 December 2015 and was internally referred to Council's Natural Resources Officer, Development Engineer and Heritage Officer. As an Integrated Development Application, the application was also externally referred to NSW Rural Fire Service (RFS) for General Terms of Approval. The application was publicly notified in accordance with Council's Notification Policy and a number of site inspections were undertaken, the most recent being 14 October 2016.

## **5.0 NOTIFICATION**

The application was notified to nine (9) adjoining property owners between 10 December 2015 and 8 January 2016 (comprising the standard 14 days with an extension due to the Christmas period) in accordance with Council's Notification Policy. As a result of this notification 14 individual submissions and 22 pro-forma letters were received in objection to the application. The matters raised can be summarised as follows:

### Suitability of site

- Site unsuitable for proposed development
- Inconsistent with E4 zone objectives
- Harm to character of area and Trentwood Park streetscape

### Natural environment

- Harm to wildlife
- Loss of significant trees

### Bushfire

- Compliance with bushfire requirements not demonstrated

### Geotechnical requirements

- Landslip/subsidence to neighbouring properties
- Proposed lots not able to safely support future dwellings

### Heritage

- Harm to character of adjacent Ruskin Rowe Heritage Conservation Area
- Harm to significance of nearby buildings

### Access and parking

- Existing access driveway not able to accommodate increased load safely
- Congestion and safety hazard within Trentwood Park
- Insufficient number of passing bays within extended access road
- Inability for waste to be appropriately collected
- Insufficient off-street parking proposed
- Pressure to on-street parking
- Hazard for pedestrians walking up access road

### Stormwater

- Increased stormwater flooding to Trentwood Park roadway

### Residential amenity

- Harm to visual and acoustic privacy of neighbouring properties
- Loss of views/change in outlook from trees to built form
- Indicative house on proposed Lot 1 too close to 8 Trentwood Park
- Access road too close to 22 Ruskin Rowe (noise/outlook/vehicle headlights)

### Miscellaneous

- Insufficient information regarding tree removal, changes to driveway access, heritage and future easements and services.
- Noise and disturbance during construction
- Potential for proposed Lot 2 to be further subdivided once approved
- Decreased property value

Regarding the suggestion that Lot 2 could be further divided in the future, Council is only able to assess the development proposed, and not to speculate as to what may be proposed in the future. Any proposal for a future subdivision would be assessed at that time, considering the planning controls and the site constraints applicable at that time.

The potential for a decreased property value does not form a material consideration in the assessment of the application.

The remainder of the above matters are discussed within the below report.

## **6.0 PITTWATER LEP 2014 AND PITTWATER 21 DCP COMPLIANCE TABLE**

- T - Can the proposal satisfy the technical requirements of the control?
- O - Can the proposal achieve the control outcomes?
- N - Is the control free from objection?

Clause	Numerical Standard	Numerical Proposal	T	O	N
<b>Pittwater Local Environmental Plan 2014</b>					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y

2.6 Subdivision - consent requirements			Y	Y	Y
Zone E4 Environmental Living		Refer to discussion within 3.0	Y	N	N
4.1 Minimum subdivision lot size		See discussion	Y	N	N
4.1AA Minimum subdivision lot size for community title schemes			-	-	-
4.2A Minimum subdivision lot size for strata plan schemes in certain rural, residential and environment protection zones			-	-	-
4.3 Height of buildings			Y	Y	Y
4.6 Exceptions to development standards			-	-	-
5.9 Preservation of trees or vegetation		See discussion	Y	N	N
5.9AA Trees or vegetation not prescribed by development control plan			-	-	-
5.10 Heritage conservation		See discussion	N	N	N
7.1 Acid sulfate soils		'Acid sulphate region 5'	Y	Y	Y
7.2 Earthworks			Y	Y	Y
7.6 Biodiversity protection		See discussion	N	N	N
7.7 Geotechnical hazards		See discussion	Y	Y	N
7.10 Essential services		See discussion of C4.6	N	N	Y
7.11 Converting serviced apartments to residential flat buildings			-	-	-
<b>Pittwater 21 Development Control Plan</b>					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings		See discussion	N	N	N
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)		No applicable SEPPs	-	-	-
4.1 Integrated Development: Water Supply, Water Use and Water Activity			-	-	-
4.5 Integrated Development: Bushfire		See discussion	Y	N	N
4.6 Integrated Development: Aboriginal Places of Heritage Significance and Aboriginal Objects			-	-	-
4.7 Integrated Development - Protection of the Environment			-	-	-
4.8 Integrated Development - Roads			-	-	-
5.1 Referral to the Roads and Maritime Services under SEPP (Infrastructure) 2007			-	-	-
5.3 Referral to NSW Office of Environment and Heritage			-	-	-
5.4 Referral to the NSW Office of Water and NSW Health			-	-	-
6.2 Section 94 Contributions: Residential development outside of Warriewood Valley		Condition could be applied if application were supported.	Y	Y	Y
<b>Section A Shaping Development in Pittwater</b>					
A1.7 Considerations before consent is granted			Y	Y	Y
A4.1 Avalon Beach Locality		See discussion	N	-	N

<b>Section B General Controls</b>					
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites		See discussion	N	N	N
B1.4 Aboriginal Heritage Significance		'No apparent issues'	Y	Y	Y
B2.2 Subdivision - Low Density Residential Areas		See discussion	N	N	Y
B3.1 Landslip Hazard		See discussion	Y	Y	N
B3.2 Bushfire Hazard		See discussion	N	N	N
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor		See discussion	N	N	N
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor		See discussion	N	N	N
B4.22 Preservation of Trees or Bushland Vegetation		See discussion	Y	N	N
B5.1 Water Management Plan		No Water Management Plan provided, however Development Engineer raises no stormwater concerns.	N	Y	Y
B5.3 Greywater Reuse			-	-	-
B5.4 Stormwater Harvesting			-	-	-
B5.7 Stormwater Management - On-Site Stormwater Detention			-	-	-
B5.8 Stormwater Management - Water Quality - Low Density Residential			-	-	-
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential			-	-	-
B5.10 Stormwater Discharge into Public Drainage System		See discussion	Y	Y	N
B5.12 Stormwater Drainage Systems and Natural Watercourses			Y	Y	Y
B5.13 Development on Waterfront Land			-	-	-
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)			-	-	-
B6.1 Access driveways and Works on the Public Road Reserve		See discussion	Y	Y	N
B6.2 Internal Driveways		See discussion	Y	Y	N
B6.3 Off-Street Vehicle Parking Requirements		See discussion	Y	Y	N
B6.6 On-Street Parking Facilities		See discussion	-	-	N
B6.7 Transport and Traffic Management		See discussion	Y	Y	N
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			-	-	-
B8.4 Construction and Demolition - Site Fencing and Security			-	-	-
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y

B8.6 Construction and Demolition - Traffic Management Plan			-	-	-
<b>Section C Development Type Controls</b>					
C1.1 Landscaping		Subdivision only New planting to be proposed with future development applications	-	-	-
C1.2 Safety and Security		Subdivision only	-	-	-
C1.3 View Sharing		See discussion	Y	Y	N
C1.4 Solar Access		Subdivision only Future dwellings able to be designed to comply	-	-	-
C1.5 Visual Privacy		See discussion	Y	Y	N
C1.6 Acoustic Privacy		See discussion	Y	Y	N
C1.7 Private Open Space		Subdivision only Space within each lot to comply	-	-	-
C1.9 Adaptable Housing and Accessibility		Subdivision only	-	-	-
C1.13 Pollution Control		Subdivision only	-	-	-
C1.14 Separately Accessible Structures		Subdivision only	-	-	-
C1.16 Development ancillary to residential accommodation - Tennis Courts		Subdivision only	-	-	-
C1.17 Swimming Pool Safety		Subdivision only	-	-	-
C1.19 Incline Passenger Lifts and Stairways		Subdivision only	-	-	-
C4.1 Subdivision - Protection from Hazards		See discussion of 4.5, 5.9 and 7.1 below	N	N	N
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities		See discussion	N	Y	N
C4.3 Subdivision - Transport and Traffic Management			-	-	-
C4.4 Subdivision - Public Roads, Footpath and Streetscape			-	-	-
C4.5 Subdivision - Utility Services			Y	Y	Y
C4.6 Service and delivery vehicle access in subdivisions		See discussion	N	N	N
C4.7 Subdivision - Amenity and Design		See discussion of 5.9, A4.1 and B6.1	N	N	Y
C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots			-	-	-
<b>Section D Locality Specific Development</b>					
D1.1 Character as viewed from a public place		See discussion	-	N	N
D1.4 Scenic protection - General		See discussion	-	N	-
D1.5 Building colours and materials		Subdivision only	-	-	-
D1.8 Front building line		Subdivision only Indicative footprints demonstrate compliance	-	-	-
D1.9 Side and rear building line		Subdivision only Indicative footprints demonstrate compliance	-	-	-
D1.11 Building envelope		Subdivision only	-	-	-
D1.14 Landscaped Area - Environmentally Sensitive Land		Subdivision only Indicative footprints demonstrate compliance, however additional roadway not shown within Lot 3	-	-	-

D1.16 Fences - Flora and Fauna Conservation Areas		Subdivision only	-	-	-
D1.17 Construction, Retaining walls, terracing and undercroft areas		Subdivision only	-	-	-

- Issues with an N are discussed in further detail in the discussion section below.
- Issues marked with a - are not applicable to this Application.

## 7.0 DISCUSSION

### • 3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings

Submissions have been received which do not consider that sufficient documentation and detail has been provided with the application. It is considered that the application includes sufficient documentation to achieve technical compliance with this control, however the documentation does not adequately demonstrate the extent of impacts relating to the development, with particular regarding to tree and wildlife habitat removal, compliance with bushfire requirements and access. For this reason, it cannot be said that the application meets the outcomes of this control.

### • 4.1 Minimum subdivision lot size

The clause requires that new lots have an area of at least 700m<sup>2</sup>, and for battleaxe allotments, specifies that the access handle is to be excluded from the calculation. The proposed lots all comply numerically and are measured as follows:

Lot	Total site area	Area excl. access handle
1	1,127m <sup>2</sup>	794m <sup>2</sup>
2	2,895m <sup>2</sup>	2,708m <sup>2</sup>
3	1,395m <sup>2</sup>	1,355m <sup>2</sup>

The application is not consistent with the objectives of the clause however, particularly with regard to the slope of the sites (56.5%, 36.5% and 18.9% respectively), the likely significant and adverse impact to the natural environment and adjoining heritage, and the provision of access.

Submissions have been received which consider the size and configuration of the lots to be out of character with the surrounding area. In this regard, the proposed lots are considered sufficiently similar to those within Trentwood Park and Chisholm Avenue to be considered compliant, notwithstanding the fact that they are smaller than some in the adjacent Ruskin Rowe. The site does not form part of the Ruskin Rowe Heritage Conservation Area, and it is not considered reasonable to require the subject site to mimic the subdivision configuration of this area.

Submissions have also been received which consider that a loss of privacy will result from the development. The indicative building footprints shown are all well separated from surrounding dwellings meaning that future development could be designed to prevent direct overlooking. The indicative dwelling on Lot 1 is located 2 metres from the side elevation of 8 Trentwood Park; this elevation would be able to be designed with offset, high-level or screened windows to prevent direct overlooking.

- **4.5 Integrated Development: Bushfire; and  
B3.2 Bushfire Hazard**

Submissions have been received which do not consider that the bushfire hazard attributed to this and surrounding properties has been adequately considered and raising concerns about flow-on safety implications for surrounding properties in the event of a bushfire.

The site is identified as bushfire prone and the application forms Integrated Development, requiring General Terms of Approval from NSW Rural Fire Services. General Terms of Approval were received from NSW RFS on 3 February 2016.

The terms of approval include a number of additional requirements to be carried out, in addition to what is proposed within the application. The first term of approval requires that the whole of the site is managed as an inner protection area. No calculation of this has been provided either by the applicant or NSW RFS, however a review of the RFS website indicates that this would be likely to require a radius of between 30 and 60 metres to be cleared around each of the three indicated dwellings to reduce fuel loads and provide sufficient space to protect the dwellings. Compliance with this requirement is likely to result the removal of significantly more trees and wildlife habitat being removed than has been assessed within the submitted Arborist report.

The third term of approval requires amendments to the extension of the access road such that the road either loops around the future dwelling on Lot 3, or otherwise provides a turning circle with a minimum 12 metre outer radius. This requirement would again necessitate the removal of a significant amount of trees and vegetation, the extent and nature of which remains unknown. Further, it has not been demonstrated that such changes to the access way could physically be provided; the affected lot includes a significant slope, and it is not clear that the RFS requirements concerning maximum gradient, crossfall and curve radii are able to be achieved, and if so, what the impact of this would be on the natural environment and natural landform.

A letter was sent to the applicant on 26 February 2016 raising these concerns and requesting additional documentation demonstrating the impact of the RFS requirements, and the ability of the site to be able to comply. To date this information has not been provided.

Additional information was received on 3 November 2016 however, comprising an addendum to the Arborist Report. This addendum does not address the likely impact of the requirements of RFS. The additional information states that future discussions will be held with neighbouring property owners, to seek access to Lot 3 from Chisholm Avenue to the north. While this may in the future form a solution to the access requirements specified by RFS, Council currently has no certainty as to whether such an agreement will be entered into, and cannot therefore rely on this as a way to resolve this concern.

Given that it has not been demonstrated that the site and the proposed development is able to comply with bushfire requirements, this forms a reason for the refusal of the application.

- **5.9 Preservation of trees or vegetation; and  
7.6 Biodiversity protection; and  
B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor  
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor  
B4.22 Preservation of Trees or Bushland Vegetation**

Submissions have been received which object to the amount of trees being removed and the impact of the development on the natural environment and wildlife habitat which exist within the site.



Council's Natural Resources Officer has provided the following comments on the proposed development:

*'The property contains a modified landscape with numerous native canopy trees and is sloping down to the road. The proposed works include demolition of an existing garage and subdivision of one lot into three lots. The proposal includes set building envelopes for newly subdivided lots and driveway and access.'*

*An arborist report has been submitted (Bluegum Tree Care and Consultancy, October 2015) which assesses forty eight (48) trees potentially impacted by the proposed works. The report proposes eleven (11) trees for removal with a further twenty four (24) requiring further assessment based on details of driveway and also proximity to proposed building envelopes. Therefore at least thirty five (35) trees will be impacted by the proposed works.*

*The arborist report recommends further assessment of trees 4, 5, 18, 19, 20, 21, 29 and 42 in regards to services alignment and right of carriageway. As these trees are of medium to high retention value and the right of carriageway is part of the current development application the retention or removal recommendation is required to be known before further assessment can be made. Therefore additional information is required which carries out further assessment of the numbered trees (4, 5, 18, 19, 20, 21, 29 and 42) as recommended in the arborist report in Section 5.2.'*

Following the submission of additional information, the following further comments were received:

*'An arborist letter has been submitted (Bluegum Tree Care and Consultancy, 6 June 2016). The letter states that Trees 2, 26 and 27 are able to be retained as the driveway is to remain as existing. The letter also states that potential for impacts from driveway works on retained trees has been eliminated. The arborist letter states that the proposed driveway alignment has been re-directed to outside the SRZ of Tree 42 and provided the driveway is designed in consultation with an AQF Level 5 Arborist Tree 42 will remain viable in the long-term.'*

*The letter also proposes a location for underground services which would avoid the Structural Root Zones of trees located close to the existing driveway. This appears to be a good proposal however plans are required to be provided which confirm this proposal as detailed will be adopted and is achievable.*

*The building envelope for Lot 3 is within the Structural Root Zone for Trees 43 and 47. Both trees have been given High Retention values Long ULE and High Landscape and Environmental Significance. The location of the building envelope within Lot 3 should be amended so that it does not fall within the SRZ for T43 and 47. An arborist letter should be provided with the amended plans confirming the location is outside the SRZ and also including assessment of any trees which may be additionally impacted by the amended location.*

*A letter from the NSW RFS has been received in regards to the proposed subdivision which includes a set of conditions that must be adopted (D15/3905, 3 February 2016). The conditions include management of the entire property (all of the lots) as an Inner Protection Area and provision of an access road which loops around the building envelope for Lot 3 or incorporates a turning circle with a minimum 12 metre radius. Both these conditions will have significant impacts on the trees within the lots however no assessment of those impacts has been provided. Therefore an updated arborist report is required to be submitted which assesses the impacts on all trees as a result of the conditions imposed by the NSW RFS.'*

A letter requesting the above information (along with other information) was sent to the applicant. While information relating to some of the trees adjacent to the driveway has been provided, no assessment of the bushfire requirements, which are likely to have the most significant impact, has been provided. The application is not supported in terms of its impact on existing trees and landscaping, for the following reasons:

- The submitted Arborist report refers to the removal of 11 trees on the site, however it is apparent from information provided on the NSW RFS website that an Inner Protection Area of between 30 – 60 metres may be required around each dwelling, in order for the development to be compliant. The exact requirement is unknown, as this has not been investigated within the submitted bushfire report or arborist report. It is evident that a large amount of significant native trees on the site would need to be removed, which is not consistent with the requirements of any of the above controls.
  - The site is identified as being a biodiversity area within Pittwater LEP 2014, as a Flora and Fauna Conservation Area and a Wildlife Corridor within Pittwater 21 DCP. The impacts of the development, including compliance with bushfire requirements, has not been explored within the application, however it is logical to conclude that such a large amount of tree and vegetation loss would be likely to have a significant adverse impact on biodiversity and wildlife on the site.
  - It has not been demonstrated that the layout of the proposed lots or the indicative building footprints have been designed in order to minimise tree removal as far as possible.
  - It would not be possible to mitigate the proposed tree loss through replacement planting, as may be appropriate on other sites, given the density of vegetation within the perimeter areas of the site, and the need to maintain separation distances to dwellings for bushfire reasons.
  - The existing access driveway, which is to be retained, is non-compliant in terms of its width, and forms a separate concern in terms of providing access to the lots by waste, delivery and emergency vehicles. In the event that the driveway were widened to be compliant, this would involve the further reduction of trees and vegetation on the site, which has not been explored.
- **5.10 Heritage conservation; and**  
**B1.2 Heritage Conservation – Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites**

Submissions have been received which consider that the development would have a harmful impact on the character of the adjacent Ruskin Rowe Heritage Conservation Area.

The subject site is located directly to the north of the Ruskin Rowe Heritage Conservation Area, and looks down onto it due to the slope of the land. Given the proximity of the site to this Heritage Conservation Area, the application was referred to Council's Heritage Officer for assessment and comment. The Heritage Officer provided comments relating to three matters:

- The impact of the development on the adjacent Ruskin Rowe Heritage Conservation Area
- The impact of the development on the existing dwelling on the site
- The impact of the development on the neighbouring property at 6 Ruskin Rowe (Hogbin House)

It was noted that the application documentation provided no detail relating to possible heritage impacts, and the applicant was requested to provide a Heritage Impact Statement. A Statement authored by John Oultram Heritage and Design was provided on 29 June 2016. Each of the above three matters are discussed below:

#### The impact of the development on the adjacent Ruskin Rowe Heritage Conservation Area

The Ruskin Rowe Heritage Conservation is noted as being of significance primarily due to its subdivision layout (being an almost pristine example of post-WW2 development in Avalon) as well as its landscape quality. The buildings within the area are not notable, and none are listed as heritage items in their own right. Council's Heritage Officer has advised that the significant reduction in trees and landscaping which would be required to facilitate the proposed development would have an adverse impact on this neighbouring Conservation Area, which looks up to the subject site. This loss of trees (and replacement with visible buildings) would significantly change the skyline and context of the conservation area.

With the Oultram Statement, the author concludes that the subdivision is acceptable, provided that tree removal is limited and that the current landscape qualities are maintained. The report refers to the original Arborist report however, which seeks removal of just eleven trees, when it is evident that many more would be required to be removed.

In light of the tree removal required to facilitate the development, it is concluded that the development would result in a harmful visual and contextual impact to the adjoining Ruskin Rowe Heritage Conservation Area, and this forms a reason for the refusal of the application.

#### The impact of the development on the existing dwelling on the site

A site inspection was undertaken by Council's Heritage Officer along with staff from the development assessment and strategic planning teams within Council. The existing dwelling on the site, a Sydney School style two storey weatherboard dwelling with detached garage, was noted to be of interest, and warranting further investigation. During the course of the application a late nomination of this building was received in relating to Council's Community Based Heritage Study. While the demolition of the garage (a later addition) was not noted to be of particular concern, a need for photographic archival was discussed. It was also noted that the dwelling itself would not require modification to facilitate the development.

#### The impact of the development on the neighbouring property at 6 Ruskin Rowe (Hogbin House)

This neighbouring dwelling, known as Hogbin House was constructed in 1958 by notable Architect Harry Seidler and designed in the Modernist style. This building is not heritage listed, nor is it proposed to be, and is not located within the Ruskin Rowe Heritage Conservation Area. The Oultram Statement notes that a number of later additions to the dwelling are not in keeping with the original design, and that this diminishes its significance somewhat. Neither the Oultram Statement or Council's Heritage Officer raise concerns regarding the impact of the development on this property in heritage terms.

- **7.7 Geotechnical hazards; and  
B3.1 Landslip Hazard**

Submissions have been received which consider that the proposed development will lead to undue land slippage and subsidence of neighbouring properties, and that the newly created lots will not be able to safely accommodate a new dwelling.

A geotechnical assessment accompanies the application which concludes that the site is suitable both in terms of the physical works proposed within this application, and is suitable to support the two new dwellings which would result from the subdivision.

Further geotechnical assessment will be required to accompany future development applications for built form, and it will again be assessed to ensure that the dwellings are appropriately constructed and protected from the site's geotechnical hazard.

Council's Development Engineer has raised no concerns relating to the lots themselves or neighbouring lots. In the event that the application were supported, conditions could be applied in order to protect adjoining development during construction.

- **A4.1 Avalon Beach Locality; and  
D1.1 Character as viewed from a public place; and  
D1.4 Scenic protection - General**

Submissions have been received which consider the proposed development to be out of keeping with the character of the Avalon Beach locality. The statement of desired character of the locality (control A4.1) states:

*'A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors... Heritage items and conservation areas indicative of early settlement in the locality will be conserved, including the early subdivision pattern of Ruskin Rowe.'*

While the application documentation seeks the removal of 11 trees out of the 48 trees identified to be affected, it is evident that in order to comply with the General Terms of Approval specified by NSW RFS, a significant amount of additional trees and wildlife habitat would need to be cleared. The extent of meeting these requirements has not been demonstrated by the applicant, and it is also not evident that the design of the lots and the siting of indicative building envelopes has been carried out with a view to minimising the loss of flora and fauna on the site. For this reason the development cannot be said to be in line with the desired future character of the Avalon Beach locality and this forms a reason for the refusal of the application.

With regard to the reference to the subdivision pattern of Ruskin Rowe, it should be noted that while the site is located adjacent to this Heritage Conservation Area, it is not located within it, and it is not therefore reasonable to require lots on this site to mirror the lots in this Conservation Area. The proposed lots are of a similar size and configuration to others within Trentwood Park and Chisholm Avenue (the nearest two streets) and no concern is raised in this regard.

- **B2.2 Subdivision - Low Density Residential Areas**

The proposed lots are numerically compliant with the minimum lot depth and width, and minimum building footprint specified within this control, however new Lot 1 has a slope of approximately 56%, significantly exceeding the specified maximum of 30%.

The new lots are not considered to have been designed to be capable of supporting development which is safe from hazards in terms of bushfire, are not considered to have an appropriate impact on the natural environment, and do not provide adequate and safe access. The application is accordingly recommended for refusal. Further discussion on each of these points can be found within the above report.

- **B6.1 Access driveways and Works on the Public Road Reserve; and  
B6.2 Internal Driveways; and  
B6.3 Off-Street Vehicle Parking Requirements; and  
B6.6 On-Street Parking Facilities; and  
B6.7 Transport and Traffic Management; and  
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities**

Submissions have been received which consider the existing access road to be inadequate in providing access to the additional dwellings, and raising concerns regarding the non-compliance of the existing driveway with Council controls and the tree removal which would be required in effecting compliance. The submissions also raise concerns that there is insufficient off-street parking to service the new lots, and that the development would put undue pressure onto the on-street parking system. Safety concerns have been raised regarding the use of the existing vehicular entry.

#### Use of existing access crossover and access way

Council's Development Engineer has reviewed the application and the submitted Traffic Impact Statement and raises no objection to the continued use of the existing vehicle crossover and existing accessway to service the new development. It has not been demonstrated however, that access for waste, recycling, delivery and emergency vehicles would be provided, given that the existing access road is largely formed of two concrete strips, is seen to include cracking, is of a non-compliant width (2.3 metres where the control requires at least 4 metres) and is not shown to include a turning area at the top. The increased use of the end of the cul de sac for waste collection and deliveries is likely to result in adverse amenity and safety impacts and is not supported.

#### Proposed construction of extension of accessway

Council's Development Engineer raises no concerns regarding the construction of the extension to the accessway. However, in order to meet the bushfire requirements stipulated by NSW RFS, this accessway extension would need to be further extended to either form a loop around the future dwelling on Lot 3, or a turning area. While requested, documentation to demonstrate compliance in this regard has not been forthcoming, and it cannot be confirmed whether these changes would be compliant either in terms of meeting Council's own driveway controls, or the controls stipulated by NSW RFS in their General Terms of Approval.

#### Off-street and on-street parking

The new lots are considered to be of a sufficient size and configuration to be able to accommodate at least two off-street car spaces, in line with the minimum requirement. Given the ability of the lots to achieve compliance in this regard, it is not considered that undue pressure to the surrounding on-street parking system would result.

- **B5.10 Stormwater Discharge into Public Drainage System**

Submissions have been received which consider that the development will result in an unacceptable additional amount of stormwater entering the Trentwood Park roadway, causing flooding. Council's Development Engineer has raised no concerns of this nature. Future development applications for dwellings on the new lots would be required to demonstrate compliance with Council's stormwater controls.

- **C1.3 View Sharing**

Submissions have been received which object to a loss of view from the proposed development, and a change in outlook from trees and vegetation to built form. The application relates to the subdivision of the site only, with no buildings proposed at this time. Future development applications for dwellings would consider view sharing as part of the assessment process. The heavily vegetated nature of this and neighbouring sites is such that any long-ranging views are likely to be minimal.

The outlook of surrounding properties would be likely to change, with significant loss of trees and landscaping likely to result. The unknown extent of this reduction in the natural environment is of concern, and forms a reason for the refusal of the application.

- **C1.5 Visual Privacy**

Submissions have been received which consider that the development will result in an undue loss of visual privacy to surrounding properties. The subject application relates to the subdivision of the site only, with no new buildings proposed at this time. However, the indicative building footprints shown include levels of separation which significantly exceed the DCP visual privacy control of 9 metres, meaning that future dwellings are able to be designed to be compliant in this regard.

The indicative building envelope of Lot 1 and the side elevation of the dwelling at 8 Trentwood Park are separated by a distance of 2 metres. In the future design of a dwelling on this Lot, it would be possible to design any windows on the northern elevation to be offset, screened, or high level to ensure that the privacy of both properties was maintained.

- **C1.6 Acoustic Privacy**

Submissions have been received which consider that the proposed development will adversely affect the acoustic privacy of neighbouring properties both through the use of the future dwellings, and due to increased traffic on the existing access road. While an increase of two dwellings is assumed, along with a commensurate increase in vehicles, this is not considered to be of an extent as to warrant the refusal of the application.

Concerns have also been raised regarding noise during the construction period. While a certain level of disturbance during the construction of any development is unfortunately likely to result, conditions could be applied in the event that the application were supported in order to mitigate this to an appropriate level.

- **C4.6 Service and delivery vehicle access in subdivisions**

Submissions have been received which raise concern with a lack of consideration relating to waste collection, and amenity and safety concerns which may result from this.

The application does not provide for the collection of waste from the development; there is insufficient space within the eastern part of Lot 1 to accommodate a bin store, and the storage of bins on the roadway of the cul de sac would result in manoeuvring and safety issues for vehicles turning. It is not apparent that a garbage truck would be able to traverse the site's accessway given that the existing section (to be retained as is) is of a non-compliant width, steep grade, and no turning circle has been demonstrated at the top of the driveway. This forms a reason for the refusal of the application.

## 8.0 CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan 2014, Pittwater 21 DCP and other relevant policies as listed as item 3.0.

The site is significantly constrained in a number of ways; it accommodates many significant trees and wildlife habitat, is located adjacent to a Heritage Conservation Area, is bushfire prone and includes a steep slope. It has not been demonstrated that each of these constraints have been sufficiently considered and managed to ensure that the development would result in an acceptable level of impact. Of particular concern is the likely impact of the development on the natural environment of the site; this site includes a high amount of significant native trees, is located on the Pittwater LEP 2014 Biodiversity Map, is listed as a Flora and Fauna Conservation Area and a wildlife habitat. The proposed development, including works required in order to achieve compliance with bushfire requirements, would result in the significant reduction of this habitat, which cannot be supported. Further, the application documentation does not adequately demonstrate that the new lots, and the properties surrounding them, would be provided with a sufficient level of amenity and safety.

The proposed development has been found to be inconsistent with the relevant statutory and policy controls and outcomes. The impacts of the proposed development are considered to be unacceptable and the application is recommended for refusal for the reasons given below.

---

## RECOMMENDATION OF PLANNER

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 **refuse consent** for Development Application N0530/15 for the subdivision of one lot into three, demolition of a detached garage and extension of an access road at 7 Trentwood Park, Avalon Beach, for the reasons provided below.

### Report prepared by

Cheryl Williamson  
**SENIOR PLANNER**

**REFUSAL  
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)  
NOTICE TO APPLICANT OF DETERMINATION  
OF A DEVELOPMENT APPLICATION**

Applicant's Name and Address:

Vaughan Milligan Development Consulting Pty Ltd  
PO Box 49  
Newport NSW 2106

Being the applicant in respect of Development Application No N0530/15

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Northern Beaches Council, as the consent authority, of Development Application No **N0530/15** for:

**Subdivision of one lot into three, demolition of existing garage and extension of existing access road.**

**At: 7 TRENTWOOD PARK, AVALON BEACH NSW 2107 (Lot 1 DP 202857)**

**Decision:**

The Development Application has been **refused** for the following reasons:

1. The proposed development would necessitate the removal of a large number of trees, the full extent of which is unknown. This will adversely impact upon numerous significant native trees, the biodiversity, flora and fauna of the site, and result in an adverse visual and character impact. This is contrary to the provisions of clauses 5.9 and 7.6 of Pittwater LEP 2014 and controls B4.2, B4.4 and B4.22 of Pittwater 21 DCP.
2. The proposed development, and in particular the extent of tree removal required to facilitate future development and bushfire requirements, will have an adverse visual impact upon the adjacent Ruskin Rowe Heritage Conservation Area. This is contrary to the provisions of clause 5.10 of Pittwater LEP 2014 and control B1.2 of Pittwater 21 DCP.
3. The application documentation does not sufficiently demonstrate that the new lots would be sufficiently protected from the site's bushfire hazard, particularly regarding the provision of appropriate access and the creation of an Inner Protection Area. This is contrary to the provisions of controls 4.5 and B3.2 of Pittwater 21 DCP.
4. The proposed development, and in particular the extent of tree and habitat removal which is likely to be required, is inconsistent with the desired future character of the Avalon Beach locality. This is contrary to control A4.1, D1.1 and D1.4 of Pittwater 21 DCP.
5. The proposed development has not been designed to provide adequate access for waste, recycling, delivery and emergency vehicles, which is likely to result in a reduction in amenity and safety to the subject site and surrounding sites. This is contrary to controls B6.2, B6.7 and C4.6 of Pittwater 21 DCP.

**NOTES**

1. This determination was taken under delegated authority on behalf of the elected Council pursuant to Section 377 of the Local Government Act 1993.
2. An applicant may under Section 82A of the Act, apply to council to review this determination.



3. Section 97 of the Act confers on the applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land & Environment Court exercisable within 6 months after receipt of this notice.
4. Any person who contravenes this notice of determination of the abovementioned development application shall be guilty of a breach of the Environmental Planning & Assessment Act, 1979, and shall be liable to a monetary penalty and for a restraining order which may be imposed by the Land and Environment Court.

Mark Ferguson  
INTERIM GENERAL MANAGER  
Per: