

RESIDENTIAL DEVELOPMENT – SECTION 4.56 APPLICATION ASSESSMENT REPORT

Modification Application Number:	MOD2021/0451
Development Application Number:	DA2009/0800 (including MOD2018/0551)
Planner:	Alex Keller
Property Address:	Lot 806 DP 752038 , 8 Lady Penrhyn Drive BEACON HILL,
Proposal Description:	Modification of Development Consent DA2009/0800 granted for the construction of 'housing for older people or people with a disability' and Torrens title subdivision.
Recommendation:	APPROVAL
Clause 20 Variation:	Yes (Existing approved variation)
Proposal in Detail:	Council approved previous boundary adjustment applications Mod2018/0212 on 21 September 2018 and Mod2018/0551 on 22 January 2019. The previous changes include creating a 1.42 metre (m) wide strip of land between lot 1 to lot 2. The previous change enabled proposed lot 2 (original house) to have a new sewer line connection by gravity to the existing sewer line on Willandra Road. Recent advice to the applicant from <i>Sydney Water</i> is that a closer connection in Lady Penrhyn Drive is available. Therefore, the 1.42m wide pipeline access handle originally intended along the northern boundary is now not required.

The modification application seeks consent to:

- Adjust the boundary between proposed lot 1 and lot 2 by deleting the 1.42 metres wide strip of land between the two lots, therefore consolidating this area back into the larger lot area, and
- Substitute the approved Torrens Title Subdivision Plan prepared by *Duncan John Sim* dated February 2010 to new plan prepared by *Simon Pak Yan Ho* dated 21 May 2021, and
- Change the plan name referred in approved condition 3A(a) from "1729 sub sheet 1 of 1, February 2010 prepared by *Duncan John Sim*" to "2902 sheet 1 of 1, 21 May 2021 prepared by *Simon Pak Yan Ho*" and remove the reference to condition 81 from condition 3A(b); and



- Change condition 81 to “Prior to the issue of any strata subdivision certificate...”
- Change condition 84 to “...the Strata Subdivision Certificate shall not be issued...”

The reason for the application is:

Condition 3A(b) also requires conditions 2, 4, 6, 81, 86 to be satisfied prior to carrying out the one to two lots Torrens Title Subdivision.

However, the reason for imposing condition 81 is to prevent the strata subdivision to be carried out before the units are safe to be occupied and ensuring that the units will only be occupied by ‘older people or people with a disability’. The applicant is seeking to carry out the Torrens Title Subdivision now since 28 out of 34 units are completed and fully occupied by aged or disabled persons. There is no risk of creating other allotments with substandard Torrens title areas or using the development for the purpose other than housing for older people or people with a disability (as stated in condition 81). Therefore the original reasons for writing the condition have now become irrelevant and hinder the orderly completion of the Torrens Title subdivision.

To avoid doubt, it also seeks to change the term of condition 84 by clearly defining the subdivision certificate as “Strata Subdivision Certificate”.

Relevant History and Background:

The application for the Torrens title subdivision and housing for aged or disabled persons development was approved by the *NSW Land and Environment Court* on 13 March 2011 as part of DA2009/0800.

This application has been various times since this approval. With regard to the subdivision MOD2018/0212, proposed a minor boundary adjustment. The approved lots have yet to be created and the land is still currently one allotment.

Plans Reference

Drawing Number	Title	Revision	Dated	Drawn By
2902 Sheet 1 of 1	Plan of Subdivision of Por 806 in Crown Plan 1208.2030	-	21 May 2021	Simon Pak Yan Ho



Report Section	Applicable – Yes or No
Section 1 – Code Assessment	Yes
Section 2 – Issues Assessment	Yes
Section 3 – Site Inspection	Yes

Notification Required:	Yes	14 days
Submissions Received:	Yes	Number of Submissions: 1
Cost of Works:	(as per DA2009/0800)	
Section 94A Applicable:	N/A	TOTAL: N/A

Section 4.56 (Consent granted by the Court) EPA ACT 1979	
Section 4.56 (1) (a) – Would the consent as proposed to be modified be substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was previously modified?	Yes (Condition 7 ensures use remains the same)
Section 4.56 (1) (b) & (c) – Has the application been on Public Exhibition?	Yes
Have you considered any submissions?	Yes
Section 4.56 (3) – Have you considered such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application	Yes

SECTION 1 – CODE ASSESSMENT REPORT

ENVIRONMENTAL PLANNING INSTRUMENTS

Warringah Local Environmental Plan 2000

Locality: B2 Oxford Falls Valley

Development Definition: Housing

Category of Development: Category 2

Desired Future Character Statement:

The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.



Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.

Is the development consistent with the Locality's Desired Future Character Statement?

Yes

Category 2 Assessment against the Desired Future Character Statement

Requirement: *Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.*

Comment: The proposed boundary adjustment will not result in any new allotments, only result in a minor change in the areas of the two approved Torrens title allotments. In this regard the approved low intensity, low impact use will remain the same and this requirement is achieved.

Requirement: *The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.*

Comment: The proposed boundary allotment will result in minimal physical works for the plan change itself and less associated other work for Sydney Water connection to Lady Penrhyn Drive and hence this DFC requirement is satisfied under the circumstances.

Requirement: *A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.*

Comment: The proposed boundary allotment will result in minimal additional / extended physical works and hence this DFC requirement is satisfied under the circumstances. Approved sewer connection works will now be primarily on the road reserve along Lady Penrhyn Drive which is satisfactory for the proposal.

Requirement: *Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.*



Comment: Minimal physical works are proposed for the subdivision change itself, with the sewer line suitable by Sydney Water to be connected in Lady Penrhyn Drive rather than along the northern bushland boundary, and hence this requirement is satisfactory for the proposed modification.

BUILT FORM CONTROLS

The relevant Built Form Control for the proposed subdivision is Housing Density, which states:

The maximum housing density is 1 dwelling per 20 ha of site area, except:

(a) where this standard would prevent the erection of one dwelling on an existing parcel of land, being all adjacent or adjoining land held in the same ownership on 8 March 1974 and having a combined area of not less than 2 ha, and

(b) on Portions 199, 200, 985, 986, 1001, 1002, 1003, 1004, 1011, 1012, 1018 and 1019 Parish of Manly Cove and Lot 33 DP 870625 Pinduro Place, Cromer, where one dwelling may be erected provided the land exceeds 4,000m² in area and was lawfully created prior to 13 August 1982, or was otherwise lawfully created, and

(c) on land that adjoins a locality primarily used for urban purposes and on which a dwelling house is permissible, where there is no maximum housing density if the development is for the purpose of "housing for older people or people with a disability" and the development complies with the minimum standards set out in clause 29.

However, consent may be granted for development that will contravene these housing density standards but, if by more than 10 per cent, only with the concurrence of the Director.

The matters which shall be taken into consideration in deciding whether concurrence should be granted are:

(a) whether non-compliance with the development standard in issue raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the planning controls adopted by this plan.

To measure housing density:

- the site area (which does not include the area of any access corridor, whether such access corridor is to be created or is in existence at the time of application for development consent) is divided by the number of dwellings proposed on the site, including any existing dwellings which are to be retained,*
- the site is the allotment which existed on the day this plan came into effect, and*
- granny flats are not considered to be a dwelling and are limited to one per allotment.*

In calculating housing density, the area of any access corridor (including any right-of-carriageway, access handle, accessway or other area that provides for vehicle access) is to be excluded, whether that access corridor is to be created or is in existence at the time of application for subdivision.

Both allotments are under the 20 hectares minimum but were approved by the NSW LEC in their original form for DA2009/0800. However, exception (c) to the standard applies. A further discussion on this is provided in the Issues section of this report.



Currently the areas are:

Lot 1: 2.42 hectares (housing for aged and disabled persons)

Lot 2: 0.209 hectare (containing the original house of the “existing parcel”)

Modification proposes

Lot 1: 2.443 hectares

Lot 2: 0.1852 hectare

The access handle along the northern boundary is consolidated within proposed Lot 1.

RELEVANT SCHEDULES

Schedule	Applicable	Compliant
Schedule 7 Matters for consideration in a subdivision of land	Yes	Yes
Schedule 8 Site analysis	Yes	Yes

OTHER RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS:

STATE ENVIRONMENTAL PLANNING POLICIES, REGIONAL ENVIRONMENTAL PLANS			
POLICY	ASSESSMENT	YES /NO /N/A	COMPLIES
SEPP – 55	Based on the previous land uses is the site likely to be contaminated?	No	Yes
	Is the site suitable for the proposed land use?	Yes	Yes
SEPP INFRASTRUCTURE	Is the proposal for a swimming pool, or Within 30m of an overhead line support structure? Within 5m of an overhead power line?	No	N/A

EPA REGULATION CONSIDERATIONS:

Regulation Clause	Applicable	Conditioned
Clause 54 & 109 (Stop the Clock)	No	N/A
Clause 92 (Demolition of Structures)	No	N/A
Clause 92 (Government Coastal Policy)	No	N/A
Clause 93 & 94 (Fire Safety)	No	N/A



Regulation Clause	Applicable	Conditioned
Clause 94 (Upgrade of Building for Disability Access)	No	N/A
Clause 98 (BCA)	No	N/A

REFERRALS

Referral Body Internal	Comments	Consent Recommended
Development Engineering	The proposed amendment to the plan of subdivision is supported. In terms of the amendment to the conditions, it is unclear what the applicant is proposing to amend in this regard. Planning are to assess this aspect of the modification and if further information is provided and comments required then a second referral is to be created. No objection to approval with no additional or modified conditions of consent recommended. The proposal is therefore supported.	Yes (Amendment to conditions clarified in recommendation)

Referral Body External	Comments	Consent Recommended
NSW Rural Fire Service	In correspondence dated 16.8.2021, the NSW Rural Fire Service has advised that they have no objection to the proposed boundary adjustment and provided revised Fire Safety Authority general terms of approval.	Yes
Ausgrid	Ausgrid referral response has been received on 21.7.2021 with no comments and no assessment required for the modification work.	Yes

APPLICABLE LEGISLATION/ EPI'S /POLICIES:	
EPA Act 1979	Yes
EPA Regulations 2000	Yes
Rural Fires Act 1997	Yes
SEPP No. 55 – Remediation of Land	Yes
WLEP 2000	Yes
WDCP 2000	Yes



Section 4.15 "Evaluation"	
Section 4.15 (1) (a)(i) – Have you considered all relevant provisions of any relevant environmental planning instrument?	Yes
Section 4.15 (1) (a)(ii) – Have you considered all relevant provisions of any provisions of any proposed environmental planning instrument	Yes
Section 4.15 (1) (a)(iii) – Have you considered all relevant provisions of any provisions of any development control plan	Yes
Section 4.15 (1) (a)(iia) - Have you considered all relevant provisions of any Planning Agreement or Draft Planning Agreement	Yes
Section 4.15 (1) (a)(iv) - Have you considered all relevant provisions of any Regulations?	Yes
Section 4.15 (1) (b) – Are the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality acceptable?	Yes
Section 4.15 (1) (c) – Is the site suitable for the development?	Yes
Section 4.15 (1) (d) – Have you considered any submissions made in accordance with the EPA Act or EPA Regs?	Yes
Section 4.15 (1) (e) – Is the proposal in the public interest?	Yes

In accordance with Section 4.56 (1A) of the Environmental Planning and Assessment Act 1979, in determining an modification application made the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

Section 4.56 - Modification by consent authorities of consents granted by the Court	Comments
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the subdivision and the development as a whole remains substantially the same as already approved under DA2009/0800 (as modified). • The layout of the building footprint, land use and site density is substantially the same. • The visual appearance of the subdivision layout in including central boundaries. • Landscape areas and fire protection provisions are substantially the same.



	• Setbacks to the road and compliance with the built form controls of WLEP 2000 are substantially the same as the master plan. • Modifications to the subdivision are consistent with the reasons for approval of the proposal by the NSW LEC court.
(b) it has notified the application in accordance with: (i) the regulations, if the regulations so require, and (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2000 including the B2 Oxford Falls Valley Locality and the <i>Community participation plan</i>.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2009/0800 (as modified).
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

The relevant matters for consideration under Section 4.15 of 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 "SEPP 55" "Sepp BASIX" and "Warringah LEP 2000".
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land).



Section 4.15 'Matters for Consideration'	Comments
	Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential (aged care) purposes for an extended period of time. The proposed development modification retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Nil
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	The EPA Regulations 2000 requires the consent authority to consider the provisions of the <i>Building Code of Australia</i>. This matter has been address via existing conditions of consent for DA2009/0800. Councils <i>Community Participation plan</i> for the notification of development applications applies.
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	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the “General Principles of Development Control” in this report. Modification assessment addressed the proposal relating to DFC and General Principles of Development; including visual amenity, building bulk, landscaping building setbacks and streetscape impacts for the B2 Oxford Falls Valley Locality. (ii) The development will contribute to the available stock of housing for aged persons in the locality the development. The subdivision change does not alter the existing approved building pattern and heights of ancillary built forms, that is consistent with the local planning controls, including ‘low intensity low impact’ use. (iii) The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site has physical constraints which and relies on appropriate setbacks to meet the DFC, including setbacks to the road and bushfire management. In this regard the proposal maintains a similar subdivision pattern and areas without any significant change to the site works. The site includes special provisions for bushfire safety that came into effect with the <i>Rural Fires Act 1997</i> and the particular requirements / allowances given to “housing for older people or people with a disability” on the urban / rural



Section 4.15 'Matters for Consideration'	Comments
	interface. The subdivision change is considered suitable subject to GTA's issued by the RFS.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regulations	One public submission was received and is addressed within this report.
Section 4.15 (1) (e) – the public interest	The public interest is considered in the context of the proposal, including reasons for approval of DA2009/0800 and the provisions applying to the B2 Oxford Falls Valley Locality for Category 2 development. The modification maintains consistency with the DFC, including the requirement for “low intensity low impact” development and consistency with the WLEP objectives in consideration of subdivision and reasons for approval. Accordingly, the assessment has found that the proposal is in the public interest with submission issues having been addressed.
Section 4.55 (3)- In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.	Consideration is made with regard to the reasons given to the granting of consent as follows: • The modification does not change the overall density of the development for the whole of the site area. • Modifications are consistent with the reasons for approval of the original development application by the <i>NSW LEC Court</i> • Consultation has been undertaken with <i>Sydney Water</i> by the applicant. It is confirmed that the alternative sewer connection by gravity for proposed lot 2 is available on Lady Penrhyn Drive. The new connection can be done by extending the pipe along Lady Penrhyn Drive and crossing the road to get the closest connection point rather than along the bushland boundary. • This new connection point will avoid a much longer excavation distance down the northern boundary to Willandra Road. It will also minimise the maintenance issues and avoid potential neighbourhood dispute / complaints about bushland disturbance. • The above matters considered are appropriate and consistent with the reasons originally given for the granting of consent by the consent authority as are of relevance pursuant to Section 4.55(1).

SECTION 2 – ISSUES

PUBLIC EXHIBITION



The subject modification application was publicly exhibited, in accordance with the EPA Regulation 2000 and the Community Participation Plan. One submission was received with the following issues raised:

Concern the subdivision will create further degradation to the water shed of Narrabeen Lagoon
Comment:

The proposed change to the subdivision will reduce the extent of works within the bushland area near the north boundary. The new connection line for the sewer is along the existing road reserve and therefore has less impact than trenching along the northern boundary.

Concern that the site has poor road evacuation in case of bushfire.

Comment:

The site has appropriate road access for fire safety and evacuation in case of bushfire. The subdivision modification does not affect this issue and no objection from the *Rural Fire Service* (RFS) pursuant to Section 100B of the Rural Fires Act is raised.

Concern that the hillside is highly vulnerable to catastrophic bushfire from the west

Comment:

Fire protection has been addressed by the original development consent and the RFS have raised no objection to the modification of consent pursuant to Section 100B of the Rural Fires Act.

Concern that the proposal will raise further risk to threatened species of plants and animals

Comment:

The proposed change to the subdivision will reduce need for trenching works within the bushland area along the north boundary. The new connection line for the sewer is along the existing road reserve and therefore has less impact on any remnant bushland.

Concern that the development will create further congestion at the Willandra road roundabout

Comment:

The proposal is a modification of the existing subdivision arrangement to delete a redundant access handle intended to be used for sewer line connection. This will have no impact on normal traffic levels or safety to Willandra Road or the roundabout. No traffic concerns are raised by Council traffic engineer.

Concern there is an oversupply of retirement accommodation in the vicinity.

Comment:

The majority of units on the site are occupied despite the site works being incomplete indicating the strong demand for retirement accommodation. No evidence is provided that there is an oversupply of housing for aged or disabled persons.

BUILT FORM CONTROLS – Warringah Local Environmental Plan 2000

WLEP 2000 specifies a “Housing Density” standard, which would apply any application for subdivision.

This control states a maximum housing density is 1 dwelling per 20 ha of site area. The proposed allotments are 2.4453 hectares (the aged and disabled persons development) and 0.1852 hectares for the dwelling allotment, which do not comply with the minimum housing standard.

However, an exception within this standard states:

“(c) on land that adjoins a locality primarily used for urban purposes and on which a dwelling house is permissible, where there is no maximum housing density if the development is for the



purpose of "housing for older people or people with a disability" and the development complies with the minimum standards set out in clause 29."

In the consideration of the original application in the NSW Land & Environment Court (LEC) proceedings, it was Council's approach that exception (c) did not apply to the subject land. The Court however considered that exception (c) did apply to the land and the Court exercised its discretion to assume the concurrence function to grant consent to the subdivision, notwithstanding the variation to the minimum standard.

The court judgement in relation to these matters (NSWLEC 1310 dated 30 December 2010) are contained in paragraphs 107-110, which is provided below:

107 That the proposed development includes a proposal for torrens title subdivision and housing for older people. As such, the Council contends the proposal does not fall within the exceptions set out in paragraph C of the Housing Density Standard.

108 I accept the submission on behalf of the applicant that the word 'only' has been inserted into the contention and I am satisfied the proposed development is for the purpose of housing for older people and people with a disability and therefore falls under the Housing Density exception in subcl C. I accept the evidence of Mr Cady that the locality statement provides a generic 20 ha lot size density standard subject to the specific exceptions which includes "C" housing for older people and people with a disability. I also accept that the subject site adjoins a 'locality' primarily used for urban purposes on which a dwelling house is permissible and as such no maximum housing density is required for the purpose of housing for older people. Where such developments comply with the minimum standards set out in cl 29. This includes a floor space ratio of 0.5:1 whereas the proposed development is 0.23:1 and height restrictions that are also complied with.

109 I am satisfied that while the development application includes a proposal to subdivide the land into 2 Torrens title lots that the development is for the purpose of providing housing for older people. The subdivision is to allow the existing dwelling house to remain on the site and the RFS has deemed the existing dwelling inappropriate for use for housing for older people due to its proximity to the northern boundary. However, they raised no issue to the existing continued use of the building as a dwelling.

110 It was submitted on behalf of the respondent that the development contravenes the housing density standard by more than 10% and the Director-General has not given concurrence. However, it was also submitted that the Court has the power under s39(6) of the *Land and Environment Court Act 1979* and I exercise this function in allowing the variation.

Further concurrence for the subject modification is not considered necessary as for the following reasons:

- No additional allotments are proposed and hence the approved Housing Density will remain the same; and



- The average variation for each allotment as a percentage is 94% unchanged; and
- The modification is in effect a minor boundary adjustment to delete a redundant element (1.42m wide handle); and
- The housing density does not strictly apply to “housing for older people or people with a disability” on the provision that it meets the minimum standards of clause 29; which the subdivision proposal does not affect; and
- The housing density applies to the original house lot being excised on the site, however the density remains consistent with the approved arrangement under DA2009/0800; and
- Essentially the change is akin to a boundary adjustment to merge the redundant sewer line access handle into the larger portion of the site.

Under the circumstances, the concurrence already granted by the Court remains in effect and applies to the proposed modification to enable it to be approved. The variation change for the modification is less than 10% of the approved subdivision areas.

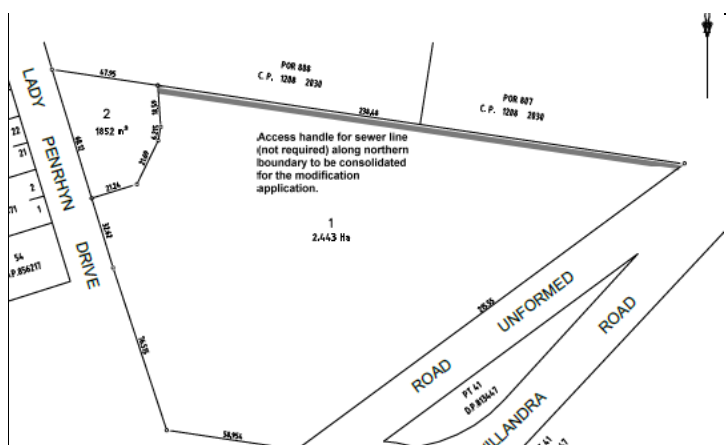


Image: Plan showing the 1.42m wide subdivision handle along the northern boundary to be consolidated with Lot 1. Sewer line for Lot 2 will go directly to Lady Penrhyn Drive. Lot 1 is already connected to a sewer junction near Willandra Road.

NON-COMPLIANCE:

Clause 20(1) stipulates:

“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.”

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

General Principles of Development Control

The proposal is consistent with the General Principles of Development Control and accordingly, does qualify to be considered for a variation to the development standards, under the provisions



of Clause 20(1) (See discussion on “General Principles of Development Control” in this report for a detailed assessment of consistency).

Desired Future Character of the Locality

The proposal is consistent with the Locality’s Desired Future Character Statement and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “Desired Future Character” in this report for a detailed assessment of consistency).

Relevant State Environmental Planning Policies

The proposal has been assessed as being consistent with all applicable State Environmental Planning Policies. (Refer to earlier discussion under ‘State Environmental Planning Policies’). Accordingly the proposal qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1). As detailed above, the proposed development satisfies the requirements to qualify for consideration under Clause 20(1). It is for this reason that the variation to the Housing Density Built Form control, pursuant to Clause 20(1), is supported.

Schedule 7 – Subdivision

The proposal is consistent with clause 22 for subdivision and the requirements of Schedule 7 are addressed as follows:

Environmentally sensitive/constrained land

The site has been extensively cleared and developed for the approved purpose and no longer contains any threatened species habitat.

Drainage

Drainage systems within the site remain unchanged and the site has an OSD system including erosion and sediment controls. The use of sewer connection reduces pollution risk from sewerage management by connection to *Sydney Water* infrastructure.

Access

The modification of consent does not change existing access requirements.

Bushfire

Bushfire protection requirements have been addressed by the existing conditions of consent and RFS Fire Safety Authority requirements in the RFS referral response, dated 16.8.2021.

Design and construction

The modification reduces the extent of construction work required with less impact along the bushland boundary of the northern edge.

Lot dimensions

The primary lot dimensions remain consistent with the width and depth of both lots with areas consistent with the existing variation granted for the original approved subdivision.



SECTION 3 – SITE INSPECTION ANALYSIS



Image: Current aerial photo of site (building 'A1") remains to be constructed and some associated ancillary site works. The majority of the buildings now occupied.

SITE AREA: 2.5 hectares.

Detail existing onsite structures:

Dwelling house and "housing for older people or people with disability" development currently under construction. The majority of approved apartments and ancillary works on site are completed as shown in site image above

Site Features:

Vegetation; rock outcrops.

Site constraints and other considerations

Bushfire Prone?

Bushfire considerations are addressed by the expert bushfire consultant review and RFS referral. In summary *Travers bushfire & ecology* have reviewed the modification plans for the subdivision changes and advise they will not significantly affect the bushfire safety authority issued the NSW RFS (dated 4th February 2010).

The changes are minor in nature, being effectively a boundary adjustment and less civil works for sewer connection and will maintain consistency relating to asset protection zones, water and utilities, access, evacuation, design and construction or landscaping. The RFS provided Fire Safety Authority revised general terms of approval for the modification in the referral response, dated 16.8.2021.

Yes



Site constraints and other considerations	
Flood Prone?	No
Affected by Acid Sulphate Soils	No
Located within 40m of any natural watercourse? The modification will reduce works and no longer require excavation near the upper end of the watercourse near Willandra Road. Therefore the change has minimal impact on water quality and riparian land.	Yes
Located within 1km landward of the open coast watermark or within 1km of any bay estuaries, coastal lake, lagoon, island, tidal waterway within the area mapped within the NSW Coastal Policy?	No
Located within 100m of the mean high watermark?	No
Located within an area identified as a Wave Impact Zone?	No
Any items of heritage significance located upon it?	No
Located within the vicinity of any items of heritage significance?	No
Located within an area identified as potential land slip?	No
Is the development Integrated? The NSW RFS have advised that proposed modification is satisfactory with regard to considerations under Section 100B of the Rural Fires Act 1997.	Yes
Does the development require concurrence?	No
Is the site owned or is the DA made by the "Crown"?	No
Have you reviewed the DP and s88B instrument? The subdivision was approved as part of DA2009/0800 and the remains consistent with the area, dimensions and subdivision requirements including reasons for approval.	Yes
Does the proposal impact upon any easements / Rights of Way? The deletion of the sewer line access handle does not require any alternative easement or right of way arrangements.	No

SITE INSPECTION / DESKTOP ASSESSMENT UNDERTAKEN BY:

Does the site inspection confirm the assessment undertaken against the relevant EPI's

Yes

Are there any additional matters that have arisen from your site inspection that would require any additional assessment to be undertaken?

No



Are there any existing unauthorised works on site?

These are part of incomplete or 'temporary' works as the construction of buildings and ancillary works is incomplete. Compliance action is being managed under separate cover by Council's Building Compliance Team.

Yes

If YES has the application been referred to compliance section for comments?

Compliance action is already being managed under separate cover by Council's Building Compliance Team.

N/A

Signed

Date: 17 August 2021

Alex Keller, Principal Planner



SECTION 4 – APPLICATION DETERMINATION

Conclusion:

The proposal has been assessed against the relevant matters for consideration under Sections 4.15 and 4.55 of the EP&A Act 1979. 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.

RECOMMENDATION - APPROVAL

That Council as the consent authority:

APPROVE THE MODIFICATION OF THE DEVELOPMENT CONSENT subject to:

The following amended conditions detailed to accompany the associated Notice of Determination:

A. Add Condition No.1C - Modification of Consent - Approved Plans and supporting Documentation, to read as follows:

“1C - Modification of Consent - 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) Modification Approved Plans

Subdivision Plan - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
2092 Sheet 1 of 1	21 May 2021	Simon Pak Yan Ho

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

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

C. Add Condition No.1D - “Compliance with Other Department, Authority or Service Requirements” to read as follows:

“1D. 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
NSW Rural Fire Service	Referral Response RFS	16.8.2021



(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website 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."

D. Modify Condition part No.3A(a) wording from "1729 sub sheet 1 of 1, February 2010 prepared by *Duncan John Sim*" to read "2902 sheet 1 of 1, 21 May 2021 prepared by *Simon Pak Yan Ho*" to read as follows within Condition 3A:

"3A Conditions applying to the two lot Torrens title subdivision

The conditions of this consent which apply to Lot 2 in the two lot subdivision are

- (a) Condition 1 insofar as it refers to Plan of Subdivision 2902 sheet 1 of 1, 21 May 2021 prepared by *Simon Pak Yan Ho*;
- (b) Conditions 2 (compliance with submitted documentation), 4 (RFS requirements) 6 (general requirements), 81 and 86 (Subdivision Plan)."

E. Modify Condition No.81 to delete reference to condition 3A(b) and amend the words to "Prior to the issue of any strata subdivision certificate", to read as follows:

"81. Creation of allotments

Prior to the issue of any Strata subdivision certificate, a final occupation certificate for the approved development of housing for older people or people with a disability on Lot 1 must be issued.

Reason: To prevent the creation of allotments with substandard areas and to ensure that the development is for the purpose of housing for older people or people with a disability."

F. Modify Condition No.84 reference to "subdivision certificate" to be the "Strata Subdivision Certificate".

"84. Plan Lodgement

To enable the lodgement of the final plan at the NSW Land and Property Information Department the Strata Subdivision Certificate shall not be issued until the Final Occupation Certificate for the approved development.

Reason: To ensure that the plans relate to approved development"



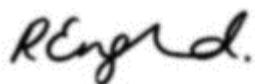
"I am aware of Council's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest"

Signed A. Keller

Date: 17 August 2021

Alex Keller Principal Planner

The application is determined under the delegated authority of:

R. Englund

Signed

Date: 31 August 2021

Rebecca Englund
Acting Manager. Development Assessment