

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0379
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Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 18 DP 19022, 107 Iris Street BEACON HILL NSW 2100
Proposed Development:	Torrens title Subdivision of one lot into four lots
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Michael Benedict Hayes Maree Smaragdi Jaloussis
Applicant:	Maree Smaragdi Jaloussis

Application Lodged:	24/04/2023
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	04/07/2023 to 18/07/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: Lot 1: 24.8% Lot 2: 20.7% Lot 3: 13.2% Lot 4: 17.7%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 127,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for Torrens title Subdivision of one (1) lot into four (4) lots.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the proposal includes a greater than 10% contravention of the Clause 4.1 Minimum Subdivision Lot Size development standard of the Warringah Local Environmental Plan 2011. Noting that the established

minimum lot size is 600sqm, the following allotment sizes are proposed:

- Lot 1: 451.5sqm (excluding access) - a variation of 24.8%
- Lot 2: 475.8sqm (excluding access) - a variation of 20.7%
- Lot 3: 520.7sqm (excluding access) - a variation of 13.2%
- Lot 4: 493.6sqm (excluding access) - a variation of 17.7%

The subject development application has been publicly exhibited in accordance with the Northern Beaches Community Participation Plan. As a result of the public exhibition of the application Council received two (2) submissions. Concerns raised in the objections predominantly relate to the creation of undersized allotments and perceived amenity impact on surrounding properties.

The most critical assessment issue was the assessment of the proposed contravention to the minimum lot size development standard. This issue is discussed in the sections of this report on Clause 4.1 Minimum subdivision lot size and Clause 4.6 Exceptions to development standards of the Warringah Local Environmental Plan 2011.

The 4.6 request for the non-compliance with the minimum lot size development standard arises from the proposed subdivision pattern. This report concludes that Council is not satisfied with the applicants written request. The proposal is inconsistent with the objectives of the minimum lot size development standard and inconsistent with the R2 Low Density Residential zone objectives. The subdivision pattern is inconsistent with the predominant existing subdivision pattern on the street. Whilst there are some undersized allotments to the east, these are not the predominate allotment size.

Therefore, this report concludes with a recommendation that the NBLPP refuse the development application.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of Torrens title Subdivision of one (1) lot into four (4) lots. Additionally, the application includes demolition of existing site structures, and construction of services & access for the lots. The development is to be split across two stages:

Stage 1

- Subdivision of Lots 1 & 2.
- Installation of services for entire site.

Stage 2

- Demolition of existing dwelling.
- Subdivision of Lots 3 & 4.

The proposal is Integrated Development and requires a bush fire safety authority from the NSW Rural Fire Service under s100B of the *Rural Fires Act 1997*. The NSW RFS has issued a bush fire safety authority for this development, subject to conditions. Refer to the section of this report on Bushfire Prone Land for further details.

Additional information was initially requested in relation to referral responses from Council's Development Engineering and Water Management teams. Further additional information was

requested in relation to Clause 4.1 Minimum subdivision lot size and Clause 4.6 Exceptions to development standards of the Warringah Local Environmental Plan 2011. Additional information and amended plans did not require re-notification in accordance with the Northern Beaches Council Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.1 Minimum subdivision lot size
Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - C1 Subdivision
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D2 Private Open Space

SITE DESCRIPTION

Property Description:	Lot 18 DP 19022 , 107 Iris Street BEACON HILL NSW 2100
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Iris Street. The site is generally regular in shape with a frontage of 34.695m along Iris Street and a depth of 65.005m. The site has a surveyed area of 2254.8m². The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.

The site slopes from a high at the rear (south) to the front (north), with a crossfall of approximately 12.1m.

The site contains lawn areas, garden beds and trees. There are no details of any threatened species on the subject site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by dwelling houses.

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:

Pre-Lodgment Meeting No. PLM2022/0204 - Subdivision of two lots into five (note - this description is inaccurate, as the proposal related to a six lot subdivision).

This pre-lodgment meeting was held on 8 November 2022 to discuss a proposal to subdivide two (2) lots (107 Iris Street and 45 Oxford Falls Road BEACON HILL) into six (6) lots. This proposal was not supported, due to access issues, engineering issues and landscaping / built form outcomes. It recommended that a four lot subdivision of 107 Iris Street be considered.

Development Application No. DA2019/1500 - Subdivision of 1 lot into 2 lots including the retention of the existing dwelling, the construction of a new dwelling, a secondary dwelling and landscape works.

Withdrawn from Council on 14 April 2020.

Pre-Lodgment Meeting No. PLM2019/0154 - Construction of a dwelling house including secondary dwelling, swimming pool and subdivision of one lot into two.

This pre-lodgment meeting was held on 8 August 2019 to discuss a proposal for the construction of a dwelling house including secondary dwelling, swimming pool and subdivision of one lot into two.

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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters could be addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was initially requested in relation to referral responses from Council's Development Engineering and Water Management teams. Further additional information was requested in relation to Clause 4.1 Minimum subdivision lot size and Clause 4.6 Exceptions to development standards of the Warringah Local Environmental Plan 2011. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter could be addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent

Section 4.15 Matters for Consideration	Comments
	authority to consider insurance requirements under the Home Building Act 1989. This matter could be addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter could be addressed via a condition of consent.
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) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The development, as proposed, is considered to be unsuitable for the site, due to inconsistencies with the provisions of Clause 4.1 Minimum subdivision lot size, Clause 4.6 Exceptions to Development Standards and the Zone R2 Low Density Residential zone objectives of the Warringah Local Environmental Plan 2011.
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	The proposal will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community, in that the proposal is inconsistent with the provisions of Clause 4.1 Minimum subdivision lot size, Clause 4.6 Exceptions to Development Standards and the Zone R2 Low Density Residential zone objectives of the Warringah Local Environmental Plan 2011. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land and the proposed development is for a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes / a special fire protection purpose under Section 100B of the Rural Fires Act 1997. As such, the proposal is integrated development and requires a bush fire safety authority from the NSW Rural Fire Service.

The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS as part of the bush fire safety authority, would be included as part of the recommended conditions of consent of any approval.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 04/07/2023 to 18/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Joseph Pascuzzo	105 Iris Street BEACON HILL NSW 2100
Mark Andrew Wattle	20 Dareen Street BEACON HILL NSW 2100

The following issues were raised in the submissions:

- **Minimum lot size variation and increased density**

The submissions raised concerns that the proposal presents allotments which are below the minimum lot size.

Comment:

The applicant has made a written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.1 Minimum subdivision lot size. Refer to the section of this report on WLEP 2011 Clause 4.6 Exceptions to development standards for a detailed assessment of minimum lot size and the 4.6 request. This report concludes that Council is not satisfied with the applicant written request. The proposal is considered to be inconsistent with the objectives of the minimum lot size development standard and inconsistent with the R2 Low Density Residential zone objectives. It is not considered that the subdivision pattern is consistent with the existing subdivision pattern on the street and surrounds. Whilst there are some undersized allotments to the east, these are not the predominate allotment size. Furthermore, the largest proposed variation is undersized by 24.8%, which is inconsistent with the pattern, size and configuration of existing lots in the locality.

This issue **does** form a reason for refusal.

- **Amenity impacts on adjoining properties**

The submissions raised concerns that the proposed subdivision and further construction of dwellings on the site would impact the amenity (privacy, views, solar access) of surrounding properties.

Comment:

Construction of dwelling houses is not proposed within this development application, however, indicative building footprints have been provided and assessed. The indicative building footprints demonstrate that all lots are able to sustain a dwelling generally in compliance with

built form controls outlined by the WDCP, with the only demonstrated non-compliance being to the rear setback requirement of Lot 1. This is assessed as supportable on merit within the relevant section of this report. Any further application for dwellings would require assessment against WDCP controls related to privacy, views and solar access.

This issue **does not** form a reason for refusal.

- **Landscaping**

The submissions raised concerns related to the landscaped area / landscaping of the proposal

Comment:

The indicative building footprints provided result in landscaped open space on each proposed allotment compliant with the requirements of WDCP Clause D1 Landscaped Open Space (LOS) and Bushland Setting. The proposal has also been reviewed and supported by Council's Landscape Officer, subject to recommended conditions.

This issue **does not** form a reason for refusal.

- **Surrounding property values**

The submissions raised concerns that surrounding property values would negatively be effected by the proposal.

Comment:

Property values are not a relevant planning consideration for Council under the Section 4.15 of the EP&A Act 1979.

This issue **does not** form a reason for refusal.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<i>Supported, subject to conditions</i> The application is assessed by Landscape Referral against Warringah Development Control Plan 2011 (WLEP), and the following Warringah Development Control Plan 2011 (WDCP) controls (but not limited to): • C1 Subdivision • E1 Preservation of Trees or Bushland Vegetation • E6 Retaining unique environmental features Upon the property, existing landscape features includes: an exposed horizontal rock shelf that is located within the indicative building envelope of proposed lot 2 (No.113) that is not visible to the streetscape due to an existing vegetation buffer; a vertical rock outcrop shelf that is visible to the streetscape and runs along the frontage of proposed lot 2 (No.113); and a large English Oak tree that

Internal Referral Body	Comments
	is located within proposed lot 2 (No.113). Other smaller vegetation types and insignificant rock outcrops exist amongst the other proposed lots. Should the subdivision proposal be approved, the exposed horizontal rock shelf is unlikely to be preserved as a visible landscape feature noting that the existing feature is not currently readily seen from the streetscape, however the vertical rock outcrop shelf is able to be preserved and thus WDCP control E6 is able to be incorporated into the amenity of the proposed lot and the streetscape. An Arboricultural Impact Assessment report is submitted to determine the impact to the existing English Oak from the proposed development works for subdivision, as well as the indicative building envelope arrangement. The report recommends retention however notes that encroachments within the tree protection zone from the proposed driveway occurs, and furthermore additional encroachment from any proposed building and parking area will be expected. To minimise impact the following recommendations are provided: • tree root investigation along the proposed driveway alignment to map existing critical roots and thus provide extent of pier and beam construction and suspended slabs required for the proposed driveway as part of the subdivision, and conditions shall be imposed should the application be approved, • tree protection fencing around the English Oak during Subdivision works, and conditions shall be imposed should the application be approved, • tree root investigations for each individual lot applications for new dwelling and associated works where proposed buildings and proposed parking areas are located in proximity to the English Oak, to determine the tree sensitive building measures required. This is not part of this Subdivision application. The indicative building envelope of lot 1 is not acceptable until further information (tree root investigation) is provided and that may result in rearrangement of the footprint under any future development application for a new dwelling and associated works in Lot 2. Adequate landscape areas are available for proposed landscape works within each lot to satisfy WDCP control D1, and the following outcomes are able to be achieved with a minimum 40% landscaped area: provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building; and enhance privacy between buildings.
NECC (Development Engineering)	<i>Supported, subject to conditions</i> <u>Response 1 - 07/06/2023</u> The following amendments are required:

Internal Referral Body	Comments
	Subdivision Plan 1. Show a 3.0 m wide drainage easement on eastern boundary benefitting Council as per PLM notes. 2. Show a drainage easement benefitting/ burdening proposed lots as required in co-ordination with amended stormwater plans. As per previous advice, a single connection point to Council pit SPP04716 is required. 3. Show a right of way composed of straight segments. The Right of Way should be 3.5 m wide on straight sections and widened as required. Right of Way 1. Provide a longitudinal section and cross sections of proposed Right of Way/ driveway. Stormwater Plans by TCP 1. The locations of the proposed on site detention systems means that a large percentage of proposed driveways will by-pass the system. The OSD systems should be located to capture 100% of internal driveways and 100% of roof areas. Show size, invert levels of pits capturing driveway run off and stubs in the OSD tanks that will connect to future dwellings. Show all proposed surface levels to justify design. 2. As advised by the Stormwater unit in the PLM notes, the internal system should connect to Council pit SPP04716. This will necessitate a drainage easement at the front of property burdening/ benefitting relevant lots as required. 3. Provide longitudinal section of proposed internal drainage system including details of connection to Council pit SPP04716 4. The on site detention system must be designed in accordance with Section 9.3.2.5 of the <i>Water Management for Development Policy Version 2 dated 26 February 2021</i>. As per advice in this section the pre-development site conditions are to be modelled as 100% pervious. The impervious fraction of the proposed development is be estimated based on the likely building footprint and other impervious areas. The impervious fraction of the proposed development must be a minimum of 60% however. The OSD system is to attenuate post development flows to pre development levels for all storm events from the 20% to the 1% AEP. Provide DRAINS model to Council for perusal. 5. DRAINS modelling requirement are as follows: (i) Use ARR Data Hub and BOM data. (ii) Use Initial loss - Continuing loss model (iii) Provide pre and post models for the 20%, 5% and 1% AEP events. 5. Approval from Sydney Water is required for building over or in the vicinity of Sydney Water assets. <u>Response 2 - 07/08/2023</u>

Internal Referral Body	Comments
	1. Subdivision Staging. A. The submitted Statement of Environmental Effects states that it is proposed to develop the site in stages with Lots 1 and 2 to be developed first. Upon the development of Lots 1 & 2 it is proposed to demolish the existing dwelling straddling proposed Lots 3 & 4. The applicant is advised to submit separate Plans of Subdivision which outline the requested Council approvals for Stage 1 and Stage 2. Please note, that the stormwater works for the ultimate subdivision will need to be constructed as part of Stage 1 works, 2. Drawing Sw-01 rev R4 by TPC. A. The on site detention tank needs to be contained entirely within a drainage easement. B. Show all pits on OSD tank. C. The building footprint cannot be within Council's drainage easement. D. No pit construction is permitted on Council's drainage easement. As per previous advice the private connection is to be made to Council pit SPP04716. No encroachment onto Council's drainage easement is permitted. E. Provide an easement over private property for the pipe connection to Council's pit for burdened lots. F. A 375 dia pipe connection to Council's pit is not supported. Provide smaller pipe to convey calculated discharge from on site detention tank. G. Provide indicative Finished Floor Levels for future dwellings. H. Provide drainage longitudinal sections for each proposed pipe. I. Provide pipe sizes. J. Pits 3 & 4 cannot have the same invert levels. 3. Drawing Sw-02 rev R4 by TPC A. Check stated OSD tank volume as it does not match the volume calculated from the tank dimensions 4. Drawing Sw-04 rev R4 by TPC. A. Confirm whether the design intent is to provide for a High Early Discharge (HED) arrangement. B. All flows are to be discharged through the control orifice for flows up to the 1% AEP. C. The top of water level is to be set at the top of emergency overflow level. Amend tank size accordingly. D. Provide levels for all overflow structures. E. Show all inlet pipe levels. Inlet pipes should be above storage levels. 5. The internal driveway shall be 3.5m wide and widened to 4.0m where the driveway is combined with an easement for services or

Internal Referral Body	Comments
	drainage 6. Provide DRAINS model of proposed OSD basin for Council perusal. 7. Show all gradients for proposed vehicle crossing and internal driveway design on driveway longitudinal sections. 8. Amend Plan of Subdivision by registered surveyor to reflect requested amendments. <u>Response 3 - 01/09/2023</u> 1. Subdivision Staging. A. The submitted Statement of Environmental Effects states that it is proposed to develop the site in stages with Lots 1 and 2 to be developed first. Upon the development of Lots 1 & 2 it is proposed to demolish the existing dwelling straddling proposed Lots 3 & 4. The applicant is advised to submit separate Plans of Subdivision which outline the requested Council approvals for Stage 1 and Stage 2. 2. Please note, that the stormwater works for the ultimate subdivision will need to be constructed as part of Stage 1 works, 2. Drawing Sw-01 rev R6 by TPC. C. The building footprint cannot be within Council's drainage easement. D. No pit construction is permitted on Council's drainage easement. As per previous advice the private connection is to be made to Council pit SPP04716. No encroachment onto Council's drainage easement is permitted. F. A 375 dia pipe connection to Council's pit is not supported. Provide a 150 or 225 dia pipe to convey calculated discharge from on site detention tank. G. Provide indicative Finished Floor Levels for future dwellings. H. Provide drainage longitudinal sections for each proposed pipe. AA. All pipes benefitting one lot and burdening another need to be within a drainage easement. One of the Pit 7's and connecting pipe appears to be outside an easement. The pipe connection from the raingarden on Lot 2 to Lot 1 is outside the easement. 3. Drawing Sw-02 rev R6 by TPC AA. Label sections X & X correctly. 4. A High Early Discharge design for the on site detention system is not supported. 5. Discharge control should be on the downstream end of the OSD basin.

Internal Referral Body	Comments
	6. The internal driveway shall be 3.5m wide and widened to 4.0m where the driveway is combined with an easement for services or drainage 7. Show all gradients for proposed vehicle crossing and internal driveway design on driveway longitudinal sections. 6. Amend Plan of Subdivision by registered surveyor to reflect requested amendments. <u>Response 4 - 14/09/2023</u> The requested amendments have generally been undertaken. I have no further objections to the proposed development subject to the following engineering conditions of consent. <u>Response 5 - 28/09/2023</u> I have reviewed the updated subdivision plans showing staging of works. It does not appear that there is a proposed timeline for the staging of works, that is how long after completion of proposed Stage 1 works, will Stage 2 works commence. The proposed works staging is not supported under a single development application. It is suggested that the application propose a three lot subdivision, with subdivision into four lots to be carried out at a later stage at the owners discretion. The submitted stormwater management plans have catered for this scenario but would require modification for the interim three lot subdivision. The following matters also require attention: 1. The proposed stormwater management plans are satisfactory for the final subdivision design, however they have not addressed stormwater management for the existing dwelling on the development site during and after the proposed Stage 1 works. 2. A longitudinal section of the proposed Right of Way driveway needs to be provided, limiting driveway grades to 25%. 3. Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m. In this instance it is suggested that a single passing bay be provided at the entry to the subdivision on Proposed Lot 1. The vehicular crossing on the property boundary can be widened to 5 metres to facilitate this. 4. Provide swept paths for vehicular access to lots 3 & 4. There appears to be conflict with the proposed water treatment measures and indicative vehicular access for Lot 3. <u>Response 6 - 02/11/2023</u>

Internal Referral Body	Comments
	Revised stormwater plans and driveway plans have been provided. I have no further objections to the proposed development.
NECC (Flooding)	<i>Supported, without conditions</i> The application seeks consent for the Torrens Title subdivision of the site from one into four lots, including a new vehicular access driveway. The property is not tagged as being flood affected. However no formal overland flow flood study has been undertaken by Council in this area, so the potential for overland flow is not known. There are no applicable flood related development controls from Section E11 of the Warringah DCP.
NECC (Water Management)	<i>Supported, subject to conditions</i> This application was assessed in consideration of: • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WM Policy); and • Relevant LEP and DCP clauses The proposal includes demolition, construction, and subdivision of one lot into four lots. The proposal triggers the General Stormwater Management Requirements of the Northern Beaches Council Water Management for Development Policy (Table 5). A Stormwater Management Report has been provided along with amended Stormwater plans. Modelling of the pollutant load reduction achieved by the water treatment chain has been provided and indicates that the post-development pollutant load reduction meets the Table 5 requirements. Council is supportive of a water treatment chain that includes a variety of treatment measures and facilitates water capture and infiltration.
Waste Officer	<i>Supported, subject to conditions</i> Waste Management Assessment Supported, subject to conditions

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<i>Supported, subject to conditions</i> The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

External Referral Body	Comments
Integrated Development - Rural Fire Service - Rural Fires Act, s100B - Subdivisions and Special Fire Protection Purposes	<i>Supported, subject to conditions</i> The site is classified as bush fire prone land and the proposed development is for a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes / a special fire protection purpose under Section 100B of the Rural Fires Act 1997. As such, the proposal is integrated development and requires a bush fire safety authority from the NSW Rural Fire Service. The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS as part of the bush fire safety authority, could be included as part of the recommended conditions of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which would be

included in the recommended conditions of consent of any approval.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	600sqm	Lot 1: 451.5sqm (excluding access)* Lot 2: 475.8sqm (excluding access)* Lot 3: 520.7sqm (excluding access)* Lot 4: 493.6sqm (excluding access)*	Lot 1: 24.8% Lot 2: 20.7% Lot 3: 13.2% Lot 4: 17.7%	No No No No

*WLEP 2011 Clause 4.1 Minimum subdivision lot size stipulates that when calculating the size of a lot area, any any access corridor (including any right of carriageway, access way or other area that provides for vehicle access) is to be excluded. Refer to the relevant section of this report for details.

Compliance Assessment

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

Detailed Assessment

Zone R2 Low Density Residential

Refer to the section of this report on WLEP 2011 Clause 4.6 Exceptions to development standards for a detailed assessment of the proposal against the objectives of the R2 Low Density Residential zone. In summary, the proposal is considered to be inconsistent with the objectives of the zone.

4.1 Minimum subdivision lot size

This Clause outlines the minimum lot size development standard which applies to the subject site, being a lot size of 600sqm.

Furthermore, the Clause outlines that following in relation to the calculation of lot size:

(3A) For the purposes of subclause (3), in calculating the size of a lot the area of any access corridor (including any right of carriageway, access way or other area that provides for vehicle access) is to be excluded, whether the access corridor is to be created or is in existence at the time of the application for development consent for the subdivision.

Without removing access corridors, the proposed allotments exhibit the following sizes:

- Lot 1: 526sqm
- Lot 2: 525.7sqm
- Lot 3: 586.9sqm
- Lot 4: 613.5sqm

The application initially outlined that the proposed development had the following sizes, excluding access handles:

- Lot 1: 526sqm - a variation of 12.3%
- Lot 2: 525.7sqm - a variation of 12.4%
- Lot 3: 525sqm - a variation of 12.5%
- Lot 4: 526sqm - a variation of 12.3%

However, these figures did not accurately reflect lot size, as all right of carriageways and access ways were not excluded in accordance with the Clause, rather just the drawn access handles of the rear lots were excluded. All areas of the access driveway are required be excluded. *Figure 1* shows in red the access driveway excluded from lot size calculations. The driveway, covered by right of way & easements, is larger than the drawn access handles for Lot 3 & 4, and encroaches into Lot 1 & 2. As such, the actual lot sizes are smaller for all allotments.

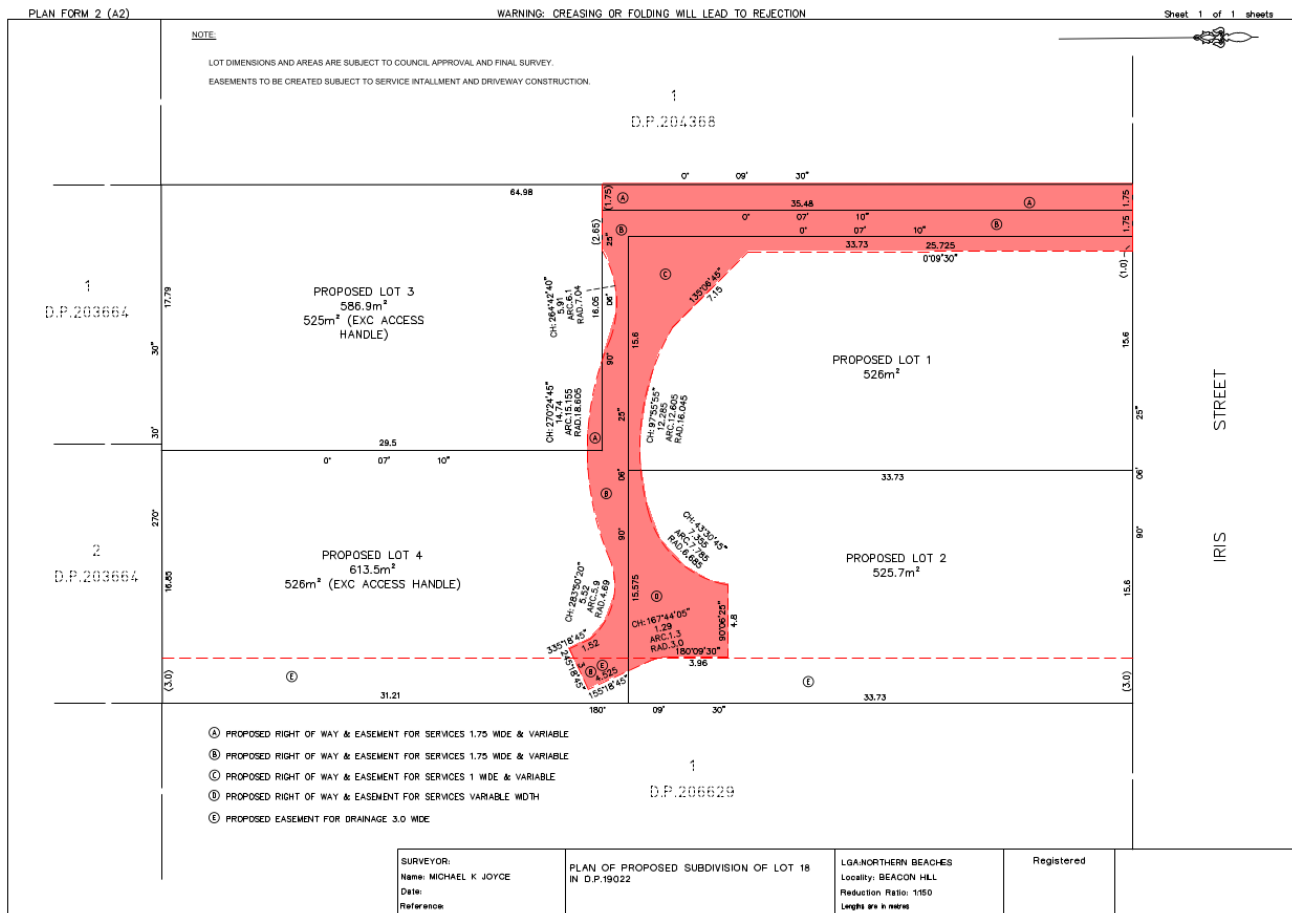


Figure 1 - Proposed Subdivision Plan with access driveway excluded from lot size calculation in red.

Therefore, in accordance with the method of calculation outline by this Clause, the following lot sizes are proposed and assessed in this report:

- Lot 1: 451.5sqm (excluding access) - a variation of 24.8%
- Lot 2: 475.8sqm (excluding access) - a variation of 20.7%
- Lot 3: 520.7sqm (excluding access) - a variation of 13.2%
- Lot 4: 493.6sqm (excluding access) - a variation of 17.7%

The applicant was notified of this discrepancy and additional information was provided . A revised written 4.6 request was provided seeking to justify the proposed variations, which is assessed in the section of this report on WLEP 2011 Clause 4.6 Exceptions to development standards.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Minimum Subdivision Lot Size
Requirement:	600m
Proposed:	Lot 1: 451.5sqm (excluding access) Lot 2: 475.8sqm (excluding

	access) Lot 3: 520.7sqm (excluding access) Lot 4: 493.6sqm (excluding access)
Percentage variation to requirement:	Lot 1: 24.8% Lot 2: 20.7% Lot 3: 13.2% Lot 4: 17.7%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

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

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

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

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

Comment:

The Applicant's written request has not demonstrated that the objectives of the development standard are achieved.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- That the proposal meets the objectives of the WLEP 2011 R2 Low Density Residential zone.
- Notwithstanding the proposed non-compliance with minimum lot size, that the proposal meets the objectives of the WLEP 2011 Clause 4.1 Minimum subdivision lot size.
- The proposed lots exceed the minimum lot dimensions under Part C1 of the Warringah Development Control Plan.
- The subdivision supports compliant building envelopes despite the variation in lot sizes.
- The subdivision is compatible with the existing pattern of subdivision despite the variation in lot sizes.
- Strict compliance with the development standard would deny the opportunity of increased land and housing supply in the Northern Beaches LGA which is experiencing a housing supply shortage.

It is considered that the arguments provided by the applicant are not acceptable.

As is assessed below, the proposal is inconsistent with the objectives of the minimum lot size development standard and inconsistent with the R2 Low Density Residential zone objectives.

It is not considered that the subdivision pattern is consistent with the existing subdivision pattern on the street or surrounds. Whilst there are some undersized allotments to the east, these are not the predominate allotment size. Furthermore, the largest proposed variation is undersized by 24.8%, which is a large proposed variation and inconsistent with the current and desired streetscape.

Whilst compliance with the control would limit the number of allotments that can be created, the large proposed variation is considered excessive and characteristic of an overdevelopment of the site. This would be contrary to the desired low density character of the area.

In this regard, the applicant's written request has not been able to demonstrate that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The applicant has provided examples of lots in the surrounding vicinity with lot sizes smaller than the minimum lot size. However, whilst there are some undersized allotments to the east, these are not the predominate allotment size. Furthermore, the largest proposed variation is undersized by 24.8%, which is a large proposed variation and inconsistent with the pattern, size and configuration of existing lots in the locality. Therefore, the subdivision does not protect residential character.

The proposal is **inconsistent** with this underlying objective.

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

Comment:

Not applicable - the proposal is not for commercial or industrial development.

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

Comment:

Not applicable - the proposal is not for subdivision of rural land.

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

Comment:

Not applicable - the proposal is not for subdivision of environmentally sensitive land.

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

Comment:

The site is classified as bush fire prone land and the proposed development is for a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes / a special fire protection purpose under Section 100B of the Rural Fires Act 1997. As such, the proposal is integrated development and requires a bush fire safety authority from the NSW Rural Fire Service. The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS as part of the bush fire safety

authority, would be included as part of the recommended conditions of consent of any approval.

The proposal is **consistent** with this underlying objective.

(f) to protect and enhance existing remnant bushland.

Comment:

The site is not dominated by bushland and as existing is cleared for residential use. Nonetheless, the proposal protects vegetation on site, including a significant tree in the middle of the existing site. The proposal has also been reviewed and supported by Council's Landscape Officer, subject to recommended conditions.

The proposal is **consistent** with this underlying objective.

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

Comment:

The proposal protects vegetation on site, including a significant tree in the middle of the existing site. The proposal has also been reviewed and supported by Council's Landscape Officer, subject to recommended conditions.

The proposal is **consistent** with this underlying objective.

(h) to manage biodiversity.

Comment:

The site is not located in an area of environmental or biological significance and retains vegetation and landscape features on site.

The proposal is **consistent** with this underlying objective.

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

Comment:

Following revisions and additional information, Council's Development Engineer has reviewed the proposal and is satisfied that the proposed development is satisfactory in regards to stormwater management, subject to conditions. Furthermore, the proposal has been reviewed and supported, subject to conditions, by Council's Water Management Officer.

The proposal is **consistent** with this underlying objective.

Zone objectives

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

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

Comment:

Whilst the proposed development will provide for the housing needs of the community, the variation to the minimum lot size result would result in a density of development that is higher

that that sought in the low density residential environment, and inconsistent with the with the pattern, size and configuration of existing lots in the locality.

The proposal is **inconsistent** with this underlying objective.

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

Comment:

Not applicable - the proposal does not include any other land uses other than residential.

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

Comment:

The proposed development retains and protects the existing natural landscape features. However, the development will not maintain a low density residential environment, as the variation to the minimum lot size would result in a density of development that is higher than that sought in the low density residential environment, and inconsistent with the with the pattern, size and configuration of existing lots in the locality.

The proposal is **inconsistent** with this underlying objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the minimum lot size development standard and inconsistent with the R2 Low Density Residential zone objectives.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Minimum Subdivision Lot Size Development Standard can not be assumed.

Warringah Development Control Plan

Built Form Controls

The following built form tables are related to the indicative building envelopes within the proposed allotments.

Lot 1				
Built Form Control	Requirement	Proposed	% Variation	Complies

B1 Wall height	7.2m	N/A - 3D indicative building envelope not provided	N/A	N/A
B3 Side Boundary Envelope	East 4m	N/A - 3D indicative building envelope not provided	N/A	N/A
	West 4m	N/A - 3D indicative building envelope not provided	N/A	N/A
B5 Side Boundary Setbacks	East 0.9m	1m	-	Yes
	West 0.9m	1.8m	-	Yes
B7 Front Boundary Setbacks	North 6.5m	10.3m	-	Yes
B9 Rear Boundary Setbacks	South 6m	3m	50%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (180.6sqm)*	61% (275.3sqm)*	-	Yes

Lot 2				
Built Form Control	Requirement	Proposed	% Variation	Complies
B1 Wall height	7.2m	N/A - 3D indicative building envelope not provided	N/A	N/A
B3 Side Boundary Envelope	East 4m	N/A - 3D indicative building envelope not provided	N/A	N/A
	West 4m	N/A - 3D indicative building envelope not provided	N/A	N/A
B5 Side Boundary Setbacks	East 0.9m	2.7m	-	Yes
	West 0.9m	1.2m	-	Yes
B7 Front Boundary Setbacks	North 6.5m	10.8m	-	Yes
B9 Rear Boundary Setbacks	South 6m	6.6m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (190.3qm)*	67.5% (321.4sqm)*	-	Yes

Lot 3				
Built Form Control	Requirement	Proposed	% Variation	Complies
B1 Wall height	7.2m	N/A - 3D indicative building envelope not provided	N/A	N/A
B3 Side Boundary Envelope	East 4m	N/A - 3D indicative building envelope not provided	N/A	N/A
	West 4m	N/A - 3D indicative building envelope not provided	N/A	N/A
B5 Side Boundary Setbacks	East 0.9m	2.5m	-	Yes
	West 0.9m	1.5m	-	Yes
B7 Front Boundary Setbacks	North 6.5m	6.5m (to lot boundary) 42m (to Iris Street boundary)	-	Yes
B9 Rear Boundary Setbacks	South 6m	8.5m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (208.3sqm)*	71.5% (372.4sqm)*	-	Yes

Lot 4				
Built Form Control	Requirement	Proposed	% Variation	Complies
B1 Wall height	7.2m	N/A - 3D indicative building envelope not provided	N/A	N/A
B3 Side Boundary Envelope	East 4m	N/A - 3D indicative building envelope not provided	N/A	N/A
	West 4m	N/A - 3D indicative building envelope not provided	N/A	N/A
B5 Side Boundary Setbacks	East 0.9m	3m	-	Yes
	West 0.9m	0.9m	-	Yes
B7 Front Boundary Setbacks	North 6.5m	7.7m (to lot boundary) 41.5m (to Iris Street boundary)	-	Yes
B9 Rear Boundary Setbacks	South 6m	8.1m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (197.4sqm)*	69.7% (344sqm)*	-	Yes

*LOS calculation are based on lot size excluding access, as is outlined in the section of this report on WLEP 2011 Clause 4.1 Minimum subdivision lot size. LOS percentages are determined by dividing LOS proposed by the proposed lot size.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	N/A	N/A
B3 Side Boundary Envelope	N/A	N/A
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C1 Subdivision	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D8 Privacy	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Construction of dwelling houses is not proposed within this development application, however, indicative building footprints have been provided and assessed. 3D building envelopes were not provided, however, it is expected that dwellings could be designed within the proposed building footprints of each lot that comply with wall height controls.

B3 Side Boundary Envelope

Construction of dwelling houses is not proposed within this development application, however, indicative building footprints have been provided and assessed. 3D building envelopes were not provided, however, it is expected that dwellings could be designed within the proposed building footprints of each lot that comply with the boundary envelope controls.

B5 Side Boundary Setbacks

Construction of dwelling houses is not proposed within this development application, however, indicative building footprints have been provided and assessed. The indicative building footprints demonstrate that all lots are able to sustain a dwelling in compliance with side setback controls.

B7 Front Boundary Setbacks

Construction of dwelling houses is not proposed within this development application, however, indicative building footprints have been provided and assessed. The indicative building footprints demonstrate that all lots are able to sustain a dwelling in compliance with front setback controls.

B9 Rear Boundary Setbacks

Description of non-compliance

This Clause of the WDCP requires development to be setback a minimum of 6m from the rear boundary.

Construction of dwelling houses is not proposed within this development application, however, indicative building footprints are provided with rear setbacks as follows:

- Lot 1 - 3m - a variation of 50%

- Lot 2 - 6.6m - compliant.
- Lot 3 - 6.5m (to lot boundary) and 42m (to Iris Street boundary) - compliant.
- Lot 4 - 7.7m (to lot boundary) and 41.5m (to Iris Street boundary) - compliant.

The indicative building envelope for Lot 1 proposes a 50% variation to the 6m requirement.

Merit consideration:

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

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

Comment:

The indicative building envelopes provided result in landscaped open space on each proposed allotment compliant with the requirements of WDCP Clause D1 Landscaped Open Space (LOS) and Bushland Setting. The proposal has also been reviewed and supported by Council's Landscape Officer, subject to recommended conditions. As such, it is considered that adequate opportunities for deep soil landscape areas are maintained.

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

Comment:

The indicative building envelopes provided result in private open space on each proposed allotment compliant with the requirements of WDCP Clause D2 Private Open Space. This variation to the control is only proposed on one of the four proposed allotments, and subject to adequate design of the dwelling (which would be considered within a separate application) the variation is not expected to significantly detract from the openness of the proposed rear yards.

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

Comment:

The rear setback breach of proposed Lot 1 is the only built form control breach proposed by the indicative building envelopes. This rear setback variation is not considered to cause an unreasonable impact to the privacy, amenity or solar access of adjacent properties, subject to assessment of any future proposed dwelling.

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

Comment:

The existing visual continuity and building pattern is not considered to be unreasonably impacted by the proposed rear setback breach. The impact of the proposed subdivision plan as a whole on the visual continuity, pattern of buildings and pattern of allotments on the street is discussed within the section of this report concerning the minimum lot size development standard.

- To provide opportunities to maintain privacy between dwellings.

Comment:

The rear setback breach of proposed Lot 1 is the only built from control breach proposed by the indicative building envelopes. This rear setback variation is not considered to cause an unreasonable impact to the privacy of adjacent properties, subject to assessment of any future proposed dwelling.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979, in relation to this Clause. This variation is supported on merit and does not form a reason for refusal.

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	R2 Low Density Residential zone requirements: Proposed new allotments: a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m²	<u>Lot 1:</u> Width: 15.6m Depth: 33.7m Building Area: 185sqm <u>Lot 2:</u> Width: 15.6 Depth: 33.7m Building Area: 155sqm <u>Lot 3:</u> Width: 17.7m Depth: 29.5m (excluding access) Building Area: 150sm <u>Lot 4:</u> Width: 16.85m Depth: 29.5m (excluding access) Building Area: 150sqm	Yes
Access	Motor vehicle access to each residential allotment is required from a constructed and dedicated public road. Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.	The proposal includes new driveway access and crossing to Iris Street, which will be shared by all four (4) properties. Council's Development Engineer has reviewed the application and provided several referral responses, following attempted revisions by the applicant. On 2 November 2023 (the sixth	Yes

Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.

Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.

Driveways in excess of 200 metres will not be allowed for residential development.

Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.

Passing bays should have regard to sight conditions and minimise vehicular conflict.

Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay.

Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.

Width of accessways are to be as follows:

Number of lots to be serviced	Width of clear constructed accessway (m)
1 - 5	3.5
6 - 10	5.0
in excess of 10	Access is to be provided by a private or public road constructed with a width that

referral response), Development Engineering supported the proposal, following revisions and subject to conditions.

Council's Waste Officer has supported the proposal, subject to conditions.

	<table><tr><td></td><td>is in accordance with Council standard specifications for engineering works (AUSPEC 1)</td></tr></table> Provision of services in rights of carriageway are as follows: <table><tr><td>Number of lots to be serviced</td><td>Additional width to be provided in Right of Carriageway (m)</td></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>		is in accordance with Council standard specifications for engineering works (AUSPEC 1)	Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)	Up to 3 lots	0.5	4 or more lots	1.0		
	is in accordance with Council standard specifications for engineering works (AUSPEC 1)										
Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)										
Up to 3 lots	0.5										
4 or more lots	1.0										
Design and construction	All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards. Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.	Council's Development Engineer has reviewed the application and provided several referral responses, following attempted revisions by the applicant. On 2 November 2023 (the sixth referral response), Development Engineering supported the proposal, following revisions and subject to conditions. The proposal complies in regard to solar access, subject to assessment of future proposed dwellings.	Yes								
Drainage	Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage	Council's Development Engineer has reviewed the application and provided several referral responses, following attempted revisions by the applicant. On 2 November 2023 (the sixth referral response), Development Engineering supported the	Yes								

	system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.	proposal, following revisions and subject to conditions.	
Restrictions	Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.	Acceptable, subject to appropriate conditions, should the proposal be supported.	Yes
Environmentally constrained land	In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment. Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	Complies. The proposal has been reviewed by Council's Flooding Engineer who raises no objections, without conditions. The site is not mapped on the flood hazard map.	Yes
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	Complies. The site is classified as bush fire prone land and the proposed development is for a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes / a special fire protection purpose under Section 100B of the Rural Fires Act 1997. As such, the proposal is integrated development and requires a bush fire safety authority from the NSW Rural Fire Service. The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety	Yes

		authority, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS as part of the bush fire safety authority, would be included as part of the recommended conditions of consent of any approval.	
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Having regard to the above assessment, it is concluded that the proposed development complies with the requirements of this Clause, is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979, in relation to this Clause.

D1 Landscaped Open Space and Bushland Setting

Construction of dwelling houses is not proposed within this development application, however, indicative building footprints have been provided and assessed. The indicative building footprints demonstrate that all lots are able to sustain a dwelling in compliance with landscape open space controls.

D2 Private Open Space

Construction of dwelling houses is not proposed within this development application, however, indicative building footprints have been provided and assessed. The indicative building footprints demonstrate that all lots are able to sustain a dwelling in compliance with private open space controls.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$ 635 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 127,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;

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

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

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

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

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.1 Minimum Subdivision Lot Size has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

This proposal, for Torrens Subdivision of one (1) lot into four (4) lots, has been referred to the Northern Beaches Local Planning Panel (NBLPP) as the proposal includes a greater than 10% contravention of the Clause 4.1 Minimum Subdivision Lot Size development standard of the Warringah Local Environmental Plan 2011.

The concerns raised in the two (2) submissions received have been addressed within this report.

The most critical assessment issue was the assessment of the proposed contravention to the minimum lot size development standard. This issue is discussed in the sections of this report on Clause 4.1 Minimum subdivision lot size and Clause 4.6 Exceptions to development standards of the Warringah Local Environmental Plan 2011.

The 4.6 request for the non-compliance with the minimum lot size development standard arises from the proposed subdivision pattern. This report concludes that Council is not satisfied with the applicant written request. The proposal is considered to be inconsistent with the objectives of the minimum lot size development standard and inconsistent with the R2 Low Density Residential zone objectives. The subdivision pattern is inconsistent with the existing subdivision pattern on the street. Whilst there are

some undersized allotments to the east, these are not the predominate allotment size. Furthermore, the largest proposed variation is undersized by 24.8%, which is a large proposed variation and inconsistent with the pattern, size and configuration of existing lots in the locality.

Therefore, this report concludes with a recommendation that the NBLPP refuse the development application.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2023/0379 for the Torrens title Subdivision of one lot into four lots on land at Lot 18 DP 19022, 107 Iris Street, BEACON HILL, for the reasons outlined as follows:

1. **Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.**

Particulars:

- The proposal is inconsistent with Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011 in that the proposal will not protect and enhance the residential use and amenity of existing residential environments, and will not result in a development that is compatible with neighbouring development in terms of bulk, scale and appearance.

2. **Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1 Minimum subdivision lot size, Clause 4.6 Exceptions to Development Standards and the Zone R2 Low Density Residential zone objectives of the Warringah Local Environmental Plan 2011.**

Particulars:

- The Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case.
- The Applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify the contravention of the development standard in the circumstances of this case.
- The proposal is inconsistent with the objectives of the minimum lot size development standard as the proposal does not protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality.
- The proposal is inconsistent with the objectives of the R2 Low Density Residential zone as the proposal does not provide for the housing needs of the community within a low density residential environment or ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.
- The Applicant's written request has not adequately demonstrated that the proposed development will be in the public interest. This is because the proposal is inconsistent with the objectives of the standard and inconsistent with the zone objectives. Therefore, the proposal will result in a development which will create an undesirable precedent

such that it would undermine the desired future character of the area and be contrary to the expectations of the community.

3. **Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 the proposed development is not suitable for the site of the development.**

Particulars:

- The development, as proposed, is considered to be unsuitable for the site, due to inconsistencies with the provisions of Clause 4.1 Minimum subdivision lot size, Clause 4.6 Exceptions to Development Standards and the Zone R2 Low Density Residential zone objectives of the Warringah Local Environmental Plan 2011.

4. **Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not in the public interest.**

Particulars:

- The proposal will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community, in that the proposal is inconsistent with the provisions of Clause 4.1 Minimum subdivision lot size, Clause 4.6 Exceptions to Development Standards and the Zone R2 Low Density Residential zone objectives of the Warringah Local Environmental Plan 2011. In this regard, the development, as proposed, is not considered to be in the public interest.