

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2016/0461
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Responsible Officer:	Tony Collier
Land to be developed (Address):	Lot B DP 341089, 41 May Road DEE WHY NSW 2099
Proposed Development:	Subdivision of land - One lot into Two
Zoning:	LEP - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Yanchen Zhou Yanyi Zhou
Applicant:	Anna Wang

Application lodged:	13/05/2016
Application Type:	Local
State Reporting Category:	Subdivision only
Notified:	14/06/2016 to 29/06/2016
Advertised:	Not Advertised, in accordance with A.7 of WDCP
Submissions:	0
Recommendation:	Refusal

Estimated Cost of Works:	\$ 30,000.00
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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 all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

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Warringah Local Environmental Plan 2011 - 4.1 Minimum subdivision lot size

Warringah Development Control Plan - C1 Subdivision

Warringah Development Control Plan - E6 Retaining unique environmental features

SITE DESCRIPTION

Property Description:	Lot B DP 341089 , 41 May Road DEE WHY NSW 2099
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of May Road. The site is located down from the crest of May Road approximately 50m from the roundabout at the Victor Road intersection. The site is a battleaxe shape with an access handle of 8.9m in width and 36.575m in length. The effective lot size is rectangular in shape and has a surveyed area of 1,264.4825m² The site is located within the R2 Low Density Residential zone and accommodates a single storey detached dwelling and associated outbuildings. Surrounding development consists of detached dwellings of varying age, style and scale. The site slopes downward from the western boundary to the eastern boundary by approximately 3m to 4m. The site contains notable rock outcrops at both sides of the entrance (and which run along both sides of the access handle) which contribute to the streetscape.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site with exception to the following:

PLM2015/0125

This pre-lodgement meeting was held on 21 October 2015 to discuss demolition works and the construction of a childcare centre accommodating 86 children, 12 staff and provision of 19 parking spaces.

The applicant (and the owner at the time) was advised that the proposal could not be supported.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent to subdivide an existing battleaxe allotment into two new allotments. The new allotments consist:

Lot	Effective Lot Area	Access Handle
Lot B	545.6m ²	162.5m ²
Lot B1	575.5m ²	306.4m ²

Note: The proposed effective lot areas are taken from the dimensions indicated on Plan 'Proposed Site Plan' dated 28 April 2016.

The 8.905m wide access handle from May Road to existing Lot B is proposed to be subdivided into two separate access handles with widths of 4.4525m each.

LETTER TO THE APPLICANT

Following the assessment of the proposal a letter was sent to the applicant dated 8 July 2016. The letter detailed matters of non-compliance and inconsistency which Council could not support. The letter stated:

"An assessment of your application has identified the following issues that will not allow Council to support this application in its current form:

Warringah Local Environmental Plan 2011 (WLEP 2011)

Clause 4.1 – Minimum Subdivision Lot Size

Clause 4.1 is a Development Standard which requires development, for the purposes of subdivision, to achieve an effective minimum lot size of 600m².

Clause 4.1(3A) stipulates that the minimum effective lot size excludes the area of any access handle (including any right of carriageway, access way or other area that provides for vehicle access).

The plans submitted with your application indicate the following minimum effective lot sizes:

- Lot B: 577.7m²; and
- Lot B1: 545.6m².

The proposed lot sizes represent variations of 3.7% for proposed Lot B1 and 9.1% for proposed Lot B.

Note: The above effective lot areas and percentages expressed in Council's initial letter were a result of a preliminary assessment and were inverted in error (i.e. Lot B should read as Lot B1 and vice versa). This was corrected in the updated letter sent to the applicant via email on 15 July 2016 (see further commentary below). This report provides the correct allocation of areas and percentages and corrects the 2.2m² difference to proposed Lot B1.

Any variation to the Clause 4.3 is to be formally submitted with a development application pursuant to Clause 4.6 of the WLEP 2011. No formal request has been included with the application and any variation to the minimum lot size cannot, therefore, be considered.

Notwithstanding the facility to request a variation of the minimum lot size, it is considered that the proposed lot sizes are inconsistent with objectives (1)(a) and (i) under Clause 4.1 in that:

- *The development does not protect the existing or desired residential character by providing a subdivision that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality; and*
- *The development does not provide for appropriate stormwater management (see drainage comments under Clause C1 – Subdivision below).*

Warringah Development Control Plan 2011

Clause C1 – Subdivision

Clause C1 requires development to comply with the following elements:

- *Lot Requirements*

Clause C1 requires that subdivision within the R2 Low Density Residential zone achieves a minimum lot depth of 27m.

The plans indicate that proposed Lot B1 achieves a minimum depth of 23.835m which is 3.165m below the requirement and represents a variation of 11.7%.

- *Access*

The provision of two access legs/driveways is not considered to be efficient in the provision of passing bays and services, as required by Clause C1.

A common driveway with right of carriageway and passing bays is recommended in lieu of separate handles and provision of landscaping and services on both sides of the common driveway.

- *Drainage*

Refer to comments provided below under 'Referral Responses')

- *Environmentally Constrained Land*

The site is located within Landslip Risk Area B and is therefore subject to constraint. Area B indicates areas which have slope angles of between 5 to 25 degrees.

Although no building structures are proposed, the topography of the property (which slopes downward from the western side boundary to the eastern side boundary by approximately 4.5m) promotes overland flow towards the western boundary of No. 35 May Road.

The issue of drainage has been addressed by Council's Development Engineer below who has advised that the development cannot be supported as the site cannot gravity feed drainage to May Road and no drainage easement rights over downstream properties have been established to be able to drain the proposed lots.

Referral Responses

Development Engineering

Council's Development Engineer has reviewed your application and advises the following:

"The submitted concept drainage plan recommends for future dwellings to be drained to May Road by means of a charged drainage system. Based on the submitted survey plan, the rear of the site is about 1.5 metres below the kerb level fronting the access handle therefore cannot drain to the street drainage system.

The Warringah Council subdivision DCP requires the proposed lots to be able to drain by a gravity fed system to May Road. The proposed development would be required to negotiate and obtain drainage easement rights over downstream properties to be able to drain the proposed lots.

As a result the development cannot be support for the following reasons:

- *Does not comply with C1 Subdivision in regards to the drainage elements.*
- *A common driveway with right of carriageway and passing bays is recommended in lieu of separate handles and provision of landscaping and services on both sides of the common driveway in compliance with the objectives of the Subdivision DCP."*

A copy of the referral response is also attached for your records.

Options available to you

Option 1

You are encouraged to withdraw this application and resubmit an application that addresses all of the issues listed above. Council will not accept any additional information or amendments to this current application.

If you choose to withdraw this application within seven days of the date of this letter (i.e. by the close of business on 14 July 2016), Council may refund a portion of the development application fees.

Option 2

If you have not contacted Council by the close of business on 14 July 2016, Council will assume that you are not withdrawing this application and no fees will be refunded and we will assess this application in its current form."

No response was received from the applicant by the due date. The applicant was contacted by telephone on 15 July 2016 who advised that they hadn't received Council's letter. It was agreed that the letter would be forwarded by email to their nominated email address on 15 July 2016. The letter was updated to include a new due date of 22 July 2016.

At the time of writing this report (26 July 2016) no response has been received.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. As the application is recommended for refusal, no condition to address this is imposed. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 79C (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 Warringah Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed

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Section 79C 'Matters for Consideration'	Comments
	land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development due to the insufficient provision of drainage.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of: • Clause 4.1 - Minimum Subdivision Lot Size under the WLEP 2011; • Clause 4.6 - Exceptions to Development Standards under the WLEP 2011; • Clause C1 - Subdivision under the WDCP 2011; and • Clause E6 - Retaining Unique Environmental Features under the WDCP 2011. and 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 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.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Development Engineers	The application was referred to Council's Development Engineer for review. The following comments have been provided: <i>"The submitted concept drainage plan recommends for future dwellings to be drained to May street by means of a charged drainage</i>

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Internal Referral Body	Comments
	system. Based on the submitted survey plan, the rear of the site is about 1.5 metres below the kerb level fronting the access handle therefore cannot drain to the street drainage system. The Warringah Council subdivision DCP requires the proposed lots to be able to drain by a gravity fed system to May street. The proposed development would be require to negotiate and obtain drainage easement rights over downstream properties to be able to drain the proposed lots. As a result the development cannot be support for the following reasons: • Does not comply with C1 Subdivision in regards to the drainage elements. • A common driveway with right of carriageway and passing bays is recommended in lieu of separate handles and provision of landscaping and services on both sides of the common driveway in compliance with the objectives of the Subdivision DCP." The above comments were forwarded to the applicant in a letter dated 8 July 2016 and again dated 15 July 2016.
Landscape Officer	No objections to the proposed subdivision.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated.

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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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the subdivision of land for residential purposes.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP 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. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Warringah Local Environment 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?	Yes

Principal Development Standards

Standard	Permitted	Proposed ²	% Variation	Complies
4.1 Minimum subdivision lot size	600m ²	Lot B: 545.6m ² Lot B1: 575.5m ²	Lot B: 9.1% (54.4m ²) Lot B1: 4.1% (24.5m ²)	No No

Notes:

1. Clause 4.1(3A) stipulates that the minimum effective lot size excludes the area of any access handle (including any right of carriageway, access way or other area that provides for vehicle access). Therefore, the above proposed lot sizes reflect the effective minimum lot size minus the access handles.
2. The proposed effective lot areas are taken from the dimensions indicated on Plan 'Proposed Site Plan' dated 28 April 2016.

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	No

Clause	Compliance with Requirements
	(see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
6.4 Development on sloping land	No

Detailed Assessment

4.6 Exceptions to development standards

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Permitted:	600m ²
Proposed:	Lot B: 545.6m ² Lot B1: 575.5m ²
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	Lot B: 9.1% Lot B1: 4.1%

The proposal must satisfy the objectives of Clause 4.1 - Minimum subdivision lot size, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Minimum subdivision lot size limitation pursuant to Clause 4.1 of the WLEP 2011 is a development standard.

What are the underlying objectives of the 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 development would result in effective lot sizes of 545.6m² and 575.5m² respectively. Nearby lots with an area of less than 600sqm can be found at No. 22 Moorilla Street, 30 Victor Rd, 32 Victor Rd, 43 Victor Rd, 47 May Rd, 38 and 38A May Rd, 40 and 40A May Rd, and 46 May Rd. A review of the subdivision pattern and lot sizes in the local area finds that the proposed lots would be marginally less than other battleaxe subdivisions. The review found the following battleaxe lot sizes in the local area (areas are less access handles):

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- No. 17 May Road: 936m²;
- No. 19 May Road: 1,296m²;
- No. 23 May Road: 864m²;
- No. 27 May Road: 1,056m²;
- No. 31B May Road: 899m²;
- No. 35 May Road: 908m²;
- No. 10A Moorilla Street: 792m²;
- No. 12 Moorilla Street: 1,224m²;
- No. 16 Moorilla Street: 1,176m²;
- No. 18 Moorilla Street: 864m²;
- No. 22 Moorilla Street: 600m²; and
- No. 22A Moorilla Street: 600.1m².

Given the above, the development is considered to be consistent with the area and pattern of subdivision of other battleaxe subdivisions in the local area.

The proposal is consistent with this objective.

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

Comment:

The proposed subdivision does not result in lots which are suitable for commercial and industrial development as these uses are prohibited within the R2 Low Density Residential zone.

This objective is not applicable to the proposal.

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

Comment:

The site is not located within a semi-rural or rural locality.

This objective is not applicable to the proposal.

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

Comment:

The local area is urbanised and developed to a low density residential standard. The locality is therefore modified from its natural state and does not include any notable environmental significance.

This objective is not applicable to the proposal.

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

Comment:

The site does not interface with bushland.

This objective is not applicable to the proposal.

(f) to protect and enhance existing remnant bushland.

Comment:

The site is located within an domestic residential environment and does not contain any remnant bushland.

This objective is not applicable to the proposal.

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

Comment:

The site does not contain any notable existing significant natural landscape features.

This objective is not applicable to the proposal.

(h) to manage biodiversity.

Comment:

The site does not accommodate any threatened species or habitat which would require retention or relocation through biobanking arrangements.

This objective is not applicable to the proposal.

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

Comment:

The site does not provide for appropriate stormwater management.

The application was referred to Council's Development Engineer who advises that the the submitted concept drainage plan recommends for future dwellings to be drained to May street by means of a charged drainage system. However, based on the submitted survey plan, the rear of the site is about 1.5 metres below the kerb level fronting the access handle and therefore cannot drain to the street drainage system.

Clause C1 of the WDCP 2011 requires the proposed lots to be able to drain by a gravity fed system to May street. The proposed development would be require to negotiate and obtain drainage easement rights over downstream properties to be able to drain the proposed lots. Evidence of such an easement has not been provided to Council to be satisfied that the development achieves appropriate stormwater management consistent with the relevant requirements of the WDCP 2011.

The proposal is not consistent with this objective.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R2 Low Density Residential zone.

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

Comment:

The subdivision would create an additional allotment which would be used for residential purposes and would therefore provide for the housing needs of the community within a low density residential environment.

The development satisfies this objective.

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

Comment:

The subdivision is to provide for an additional allotment to support residential development.

The provision of an additional dwelling would add to the market base in the local area which would support other land uses that provide facilities or services to meet the day to day needs of residents.

It is considered that the development satisfies this objective.

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

Comment:

The development could include landscaped settings which are in harmony with the natural environment of Warringah.

It is considered that the development is capable of satisfying this objective.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?

(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.

Comment:

The clause provides for a level of flexibility in applying the Minimum Subdivision Lot Size Development Standard. However, while the proposed variations resulting from the proposed lot sizes are within a 10% margin, it has been found that the development is inconsistent with two of the objectives of the Development Standard (primarily on the basis of the provision of stormwater/drainage management) and that a written request pursuant to Clause 4.6(3) has not been received from the applicant that seeks to justify the contravention of the development standard.

Given the above matters, it is not considered that the development would a better outcome by allowing flexibility in this particular circumstance.

(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.

(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.

Comment:

A written request pursuant to Clause 4.6(3) has not been received from the applicant that seeks to justify the contravention of the development standard.

Therefore, development consent must not be granted.

(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

Comment:

A written request pursuant to Clause 4.6(3) has not been received from the applicant that seeks to justify the contravention of the development standard.

Therefore, development consent must not be granted.

(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:

For reasons detailed above, the proposal is considered to be inconsistent with the objectives of the R2 Low Density Residential zone in the WLEP 2011.

(b) the concurrence of the Director-General has been obtained

Comment:

Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, 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 cannot be assumed.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies*
B1 Wall height	7.2m	Lot B: Not indicated	N/A	Capable of complying
		Lot B1: Not indicated	N/A	Capable of complying
B3 Side Boundary Envelope	4.0m x 45°	Lot B: Not indicated	N/A	Capable of complying

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		Lot B1: Not indicated	N/A	Capable of complying
B5 Side Boundary Setbacks	0.9m	<u>Lot B</u> North: 1.5m to 4.0m South: 1.5m to 3.8m	N/A N/A	Capable of complying Capable of complying
		<u>Lot B1</u> North: 5.0m to 10.2m South: 4.8m to 7.2m	N/A N/A	Capable of complying Capable of complying
B7 Front Boundary Setbacks	6.5m	Lot B: 1.5m to 5.0m	23%	Capable of complying
		Lot B1: 1.5m to 5.0m	23%	Capable of complying
B9 Rear Boundary Setbacks	6.0m	Lot B: 6.0m	N/A	Capable of complying
		Lot B1: 6.0m	N/A	Capable of complying
D1 Landscaped Open Space (LOS) and Bushland Setting	Lot B: 40% (218.2m ²) Lot B1: 40% (230.2m ²)	31% (179.4m ²)	22.3% (38.8m ²)	Capable of complying
		60.1% (328.4m ²)	N/A	Capable of complying

*Notes:

1. The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)
2. The plans include building footprints which are indicative only and are not the subject of this application. Separate Development Applications will be required to be lodged and compliance against the above controls will be undertaken at that time. Therefore, the above only indicates that the proposed lots are capable of accommodating dwellings which can comply with the applicable controls.
3. The building footprint indicated for Lot B = 262.6m² which exceeds the minimum requirement of 150m² as stipulated under Clause C1 of the WDCP 2011. This results in an excess of 112.6m² which could be reduced in a final building design to achieve compliance with the LOS control. The building footprint indicated for Lot B1 = 157.4m².

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	N/A	No
C1 Subdivision	No	No
C4 Stormwater	No	No
D21 Provision and Location of Utility Services	Yes	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
E1 Private Property Tree Management	Yes	Yes
E6 Retaining unique environmental features	No	No
E10 Landslip Risk	Yes	Yes

Detailed Assessment

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 B</u> Width: 19.145m Depth: 28.50m Building Area: 262.6m² (indicated) <u>Lot B1</u> Width: 24.145m Depth: 23.835m Building Area: 157.4m² (indicated)	<u>Lot B</u> Complies <u>Lot B1</u> Does not comply (depth)
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. Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided. Driveways, accessways, etc, to allotments should have a gradient not	Driveway length exceeds 30m to both lots. Shared driveway width is 8.9m (i.e. 4.452m each). A common driveway with right of carriageway and passing bays is recommended in lieu of separate handles and provision of landscaping and services on both sides of the common driveway.	Does not comply Requires amendment to the access handles to form a single common driveway with a Right of Carriageway.

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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

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	<table><tr><td></td><td>or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)</td></tr></table>		or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)						
	or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)								
	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>	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		
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.	With respect to drainage, refer to commentary below as provided by Council's Development Engineer. With respect to driveway access, Council's Development Engineer advises that <i>"a common driveway with right of carriageway and passing bays is recommended in lieu of separate handles and provision of landscaping and services on both sides of the common driveway in compliance with the objectives of the Subdivision DCP"</i>.	Does not comply						

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	Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.	With respect to solar access, the location of buildings within the proposed lots would allow for sunlight penetration to the neighbouring lots to the east, west and south. The development of individual dwellings would be capable of complying with Clause D6 of the WDCP 2011.	
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 system and not via adjoining properties unless via a formalised inter-allotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Inter-allotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.	Council's Development Engineer advises: <i>"The submitted concept drainage plan recommends for future dwellings to be drained to May street by means of a charged drainage system. Based on the submitted survey plan, the rear of the site is about 1.5m below the kerb level fronting the access handle therefore cannot drain to the street drainage system.</i> <i>The WDCP 2011 requires the proposed lots to be able to drain by a gravity fed system to May street. The proposed development would be require to negotiate and obtain drainage easement rights over downstream properties to be able to drain the proposed lots.</i> <i>As a result the drainage element of the development cannot be supported."</i>	Does not comply
Restrictions	Any easement, right-of-carriageway, or other restriction that is placed	Subject to condition	The development is capable of compliance subject to condition.

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	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.		
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.	The site is located within Landslip Risk Area B. Although no building structures are proposed in this application, the topography (which slopes downward from the western side boundary to the eastern side boundary by approximately 4.5m) does promote overland flow towards No. 35 May Road. The issue of drainage has been addressed by Council's Development Engineer who has advised that the development cannot be supported as the site cannot gravity feed drainage to May Road and no drainage easement rights over downstream properties have been established to be able to drain the proposed lots.	Does not comply
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.	The site is not located within bushfire prone land	Not applicable.

Description of non-compliance

On balance, the development has been found to be non-compliant with the following requirements of Clause C1:

- Lot Requirements;
- Access;
- Design and Construction;
- Drainage; and
- Environmentally Constrained Land.

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To regulate the density of development.*

Comment:

The development would result in effective lot sizes of 545.6m² and 575.5m² respectively (less access handles). A review of the subdivision pattern and lot sizes in the local area finds that the proposed lots would be generally consistent with other subdivisions.

Although the degree of variation to the minimum lot size is minor (i.e. 9.1% and 4.1% respectively) the applicant has not submitted a request to vary the minimum lot size Development Standard and, in accordance with Clause 4.6(3) of the WLEP 2011, the variation cannot be supported.

The development is inconsistent with this objective.

- *To limit the impact of new development and to protect the natural landscape and topography.*

Comment:

Council's Development Engineer has found that the development does not provide gravity drainage to May Street, as required under Clause C1 and C4 of the WDCP 2011 and Council's 'Stormwater Drainage from Low Level Properties' policy PDS-POL 136.

Because the rear of the site is approximately 1.5m below the kerb level it is conceivable that water flow would be directed by gravity towards the eastern side boundary and adjacent properties. As Council's Development Engineer has indicated, a gravity feed to May Road would therefore not be possible and an inter-allotment easement is to be obtained to ensure through-site drainage over downstream properties.

The application does not provide for the required inter-allotment easement and no response has been received from the applicant with respect to Council's letter dated 8 July 2016 which raised this issue.

Therefore, the drainage design of the development is considered to result in an unacceptable impact.

The development is inconsistent with this objective.

- *To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.*

Comment:

As discussed above, while the development provides for sufficient area for landscaping, private open space, utility services and vehicular access to and from the site, it does not provide for a drainage system which would utilise the lot area effectively, as required by Clause C4 of the WDCP 2011 and Council's 'Stormwater Drainage from Low Level Properties' policy PDS-POL 136.

The development is inconsistent with this objective.

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

Comment:

The proposed lot shapes and dimensions can accommodate dwelling footprints of 150m² which would allow for sufficient building separation to maximise and protect solar access for each new dwelling.

The development is consistent with this objective.

- *To maximise the use of existing infrastructure.*

Comment:

The development would include an additional allotment which would increase the use of existing infrastructure in the area.

The development is consistent with this objective.

- *To protect the amenity of adjoining properties.*

Comment:

The proposed lot shapes and dimensions can accommodate dwelling footprints of 150m² which would allow for sufficient building separation to maximise and protect solar access and privacy for neighbouring properties.

However, as discussed above, because the rear of the site is approximately 1.5m below the kerb level it is conceivable that water flow would be directed by gravity down towards the eastern side boundary and adjacent properties at No. 35 and 37 May Road.

The development is consistent with this objective.

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

Comment:

The development does not provide sufficient provision for drainage such that the flooding of the neighbouring downstream properties at No. 35 and 37 May Road would be prevented.

The development is not consistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP 2011 and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

E6 Retaining unique environmental features

Merit consideration:

The development will require the removal of parts of the rock outcrop which forms the entrance to the driveway and is a unique environmental feature which contributes towards the streetscape.

The development is therefore considered against the underlying Objectives of the Control as follows:

- *To conserve those parts of land which distinguish it from its surroundings.*

Comment:

The rock outcrops which form the entrance to the site and line the existing access handle would be required to be modified and/or removed to provide for an increased driveway width and the installation of services (according to the Stormwater Concept Plan submitted with the application which proposes drainage lines running beneath both sides of the new driveway at the location of the rock outcrops).

The rock outcrops form a distinctive and remnant natural feature of the streetscape which derives from the rock platform upon which No. 39 May Road is sited.

While trimming of the rock outcrops would be supported, extensive removal would not be supported as this would be contrary to the primary objective of the control which aims to conserve any such features which distinguish a property from its surroundings.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP 2011 and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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:

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

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2016/0461 for the Subdivision of land - One lot into Two on land at Lot B DP 341089,41 May Road, DEE WHY, subject to the reasons outlined as follows:

1. Pursuant to Section 79C(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.
2. Pursuant to Section 79C(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 of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Development on Sloping Land of the Warringah Local Environmental Plan 2011.
4. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1 Subdivision of the Warringah Development Control Plan.
5. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4 Stormwater of the Warringah Development Control Plan.
6. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause E6 Retaining Unique Environmental Features of the Warringah Development Control Plan.

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

Signed

Tony Collier, Senior Development Planner

The application is determined under the delegated authority of:

Rodney Piggott, Development Assessment Manager

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ATTACHMENT A

Notification Plan	Title	Date
 2016/157845	Plan - Notification	28/04/2016

ATTACHMENT B

Notification Document	Title	Date
 2016/184077	Notification Map	14/06/2016

ATTACHMENT C

Reference Number	Document	Date
 2016/157840	Plan - Survey	23/03/2016
 2016/157845	Plan - Notification	28/04/2016
 2016/157859	Plans - Master Set	28/04/2016
 2016/157850	Report - Statement of Environmental Effects	09/05/2016
 2016/157856	Report Waste Management Plan	09/05/2016
 DA2016/0461	41 May Road DEE WHY NSW 2099 - Development Application - Subdivision	13/05/2016
 2016/149623	DA Acknowledgement Letter - Anna Wang	13/05/2016
 2016/157823	Applicant Details	19/05/2016
 2016/157807	Development Application Form	19/05/2016
 2016/178347	Referral to Ausgrid	08/06/2016
 2016/180291	Referral Response - Development Engineering	09/06/2016
 2016/184055	Notification Letter - DA - 17 Letters Sent	14/06/2016
 2016/184077	Notification Map	14/06/2016
 2016/198164	Referral Response - Landscape	23/06/2016
 2016/221735	Request for Withdrawal of Development Application - Anna Wang	07/07/2016
 2016/235551	Email from TC to applicant with attached 7 Day Letter (see Notes)	15/07/2016
 2016/235637	Updated letter requesting withdrawal of the application (new date)	15/07/2016
 2016/254542	Obsolete - Assessment Report	01/08/2016