

**NSLPP MEETING HELD ON 05/02/2025****Attachments:**

1. Proposed Subdivision Plan
2. Clause 4.6 Request

**ADDRESS/WARD:** 34-36 Whaling Road, North Sydney**APPLICATION NO:** DA 289/2024 (PAN-479550)**PROPOSAL:** Torrens title subdivision of a dual occupancy (attached) from one lot into two and subsequent change of use to two semi-detached dwellings.**PLANS REF:**

Plan No.	Description	Prepared by	Dated Issued	Date Received
Sheet 1 of 1	Draft Subdivision	Paul Anthony Cechellero	19 August 2024	16 October 2024

**OWNER:** Carl Du Bois**APPLICANT:** Paul Cechellero**AUTHOR:** Report of Luka Abramovic, Graduate Assessment Officer**DATE OF REPORT:** 23 December 2024**DATE LODGED:** 7 November 2024**RECOMMENDATION:** Approval

## EXECUTIVE SUMMARY

This development application seeks consent for a Torrens title subdivision of a dual occupancy (attached) from one lot into two and subsequent change of use to two semi-detached dwellings at 34-36 Whaling Road, North Sydney.

**The application is reported to the North Sydney Local Planning Panel for determination as the application seeks a variation to a development standard by more than 10%.**

The subject site, legally described as Lot 1, DP 6328 is known as 34-36 Whaling Road, North Sydney and is currently occupied by a single storey dual occupancy. The site is a corner allotment, with a 14.6m primary frontage along Whaling Road, and a northern boundary along Margaret Street of 51.39m. The southern boundary which adjoins 38 Whaling Road is measured to be 50.35m, and the rear boundary along The Avenue is 12.32m. The site is a parallelogram in shape and has an area of 565m<sup>2</sup>, and the topography of the site is generally flat.

The proposal seeks the legal Torrens subdivision of 34-36 Whaling Road, North Sydney into two separate lots, with no physical works proposed. As a result of the subdivision, the land use would change to that of a pair of semidetached dwellings based on the definition in the standard instrument. The development is permitted within the R2 Low Density Residential zone.

The proposed building results in a non-compliance with the minimum subdivision lot size development standard in Clause 4.1 of the *North Sydney Local Environmental Plan 2013*. The existing lot has an area of 565m<sup>2</sup> and the resultant lot size for proposed Lot 1 is 283.3m<sup>2</sup>, and 281.6m<sup>2</sup> for Lot 2. The proposal results in a variation to both Lots 1 and 2 of 45.46% and 46.03% respectively.

A written request has been submitted pursuant to clause 4.6 in *NSLEP 2013* which demonstrates that compliance with the development standard is unreasonable and unnecessary as the objectives of the standard are achieved notwithstanding the variation, and that there are sufficient environmental planning grounds to justify the variation in the circumstances of the case.

Notification of the proposal attracted no submissions during the period between 03 – 17 December 2024.

As the proposal does not include any physical works to the dwelling, there would be no significant impact on the existing amenity levels of neighboring dwellings in terms of overshadowing, view loss and acoustic and visual privacy. Moreover, the proposal would be consistent with the subdivision pattern of the street. This is discussed further herein.

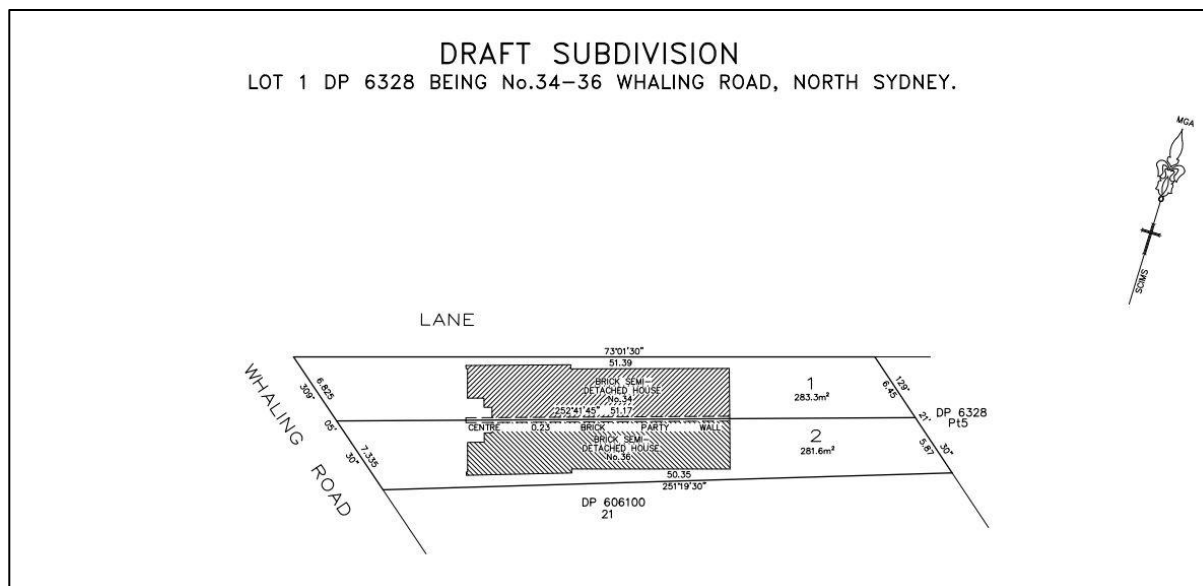
Following this assessment the development application is considered to be reasonable in the circumstances and is recommended for **approval** subject to conditions.



## DESCRIPTION OF PROPOSAL

The applicant is seeking development consent for the following works:

- The subdivision of the existing subject site by way of Torrens title from one lot into two.
  - Lot 1 (34 Whaling Road) comprising an area of 283.3m<sup>2</sup>
  - Lot 2 (36 Whaling Road) comprising an area of 281.6m<sup>2</sup>
- No physical works proposed.



**Figure 1: Proposed subdivision plan for the subject site.**

### Referral to NSLPP:

The application is reported to NSLPP for determination because the proposed Torrens Title subdivision breaches the minimum lot size standard of 450m<sup>2</sup> for the site. The proposed subdivision seeks a variation that exceeds more than 10% of the standard, being a 45.46% variation for proposed Lot 1 (283.3m<sup>2</sup>) and 46.03% variation (281.6m<sup>2</sup>) for proposed Lot 2.

### STATUTORY CONTROLS

#### *North Sydney Local Environmental Plan 2013*

- Zoning – R2 Low Density Residential
- Item of Heritage – No
- In Vicinity of Heritage Item – Yes
  - I0872 (4 Margaret Street)
  - I1022 (41 Whaling Road)
  - I1023 – I1029 (45-57 Whaling Road)
- Conservation Area – Yes
  - Whaling Road Conservation Area
- FSBL – No

#### *Environmental Planning & Assessment Act 1979*

#### *Environmental Planning and Assessment Regulation 2021*

#### SEPP (Biodiversity and Conservation) 2021

- Chapter 2 – Vegetation in Non-Rural Areas

- Chapter 6 – Water Catchments  
SEPP (Resilience and Hazards) 2021
- Chapter 4 – Remediation of Land  
Local Development

## POLICY CONTROLS

North Sydney Development Control Plan 2013

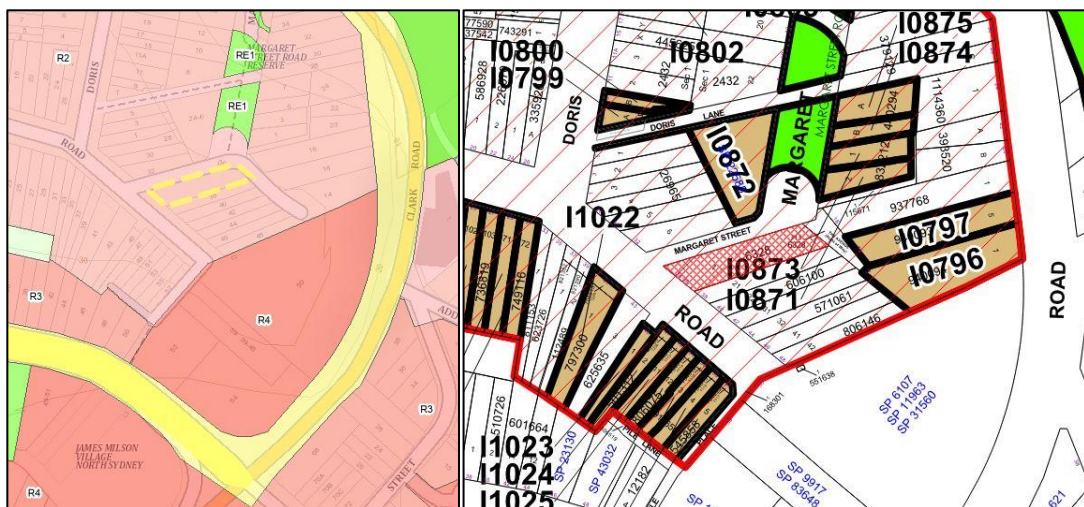
- Appendix 1 (Heritage) – Contributory Item  
Housing Productivity Contribution 2024

## DESCRIPTION OF LOCALITY

The subject site, legally described as Lot 1, DP 6328 is known as 34-36 Whaling Road, North Sydney and is currently occupied by a single storey dual occupancy. The site is a corner allotment, with a 14.6m primary frontage along Whaling Road, and a northern boundary along Margaret Street of 51.39m. The southern boundary which adjoins 38 Whaling Road is measured to be 50.35m, and the rear boundary along The Avenue is 12.32m. The site is a parallelogram in shape and has an area of 565m<sup>2</sup>, and the topography of the site is generally flat.

The dwelling is constructed from face brick and comprises a hipped roof with a gable bay above the dwelling entrances. Along the primary façade, the dwelling entrances are separated via a face brick wall. To the side of the entrances are windows which rest on stone foundations. The front setback is landscaped, with grass and mature trees, and minor hedges act as front fencing.

Towards and within the rear setback are grassed and landscaped areas, with vegetation being planted along the side boundaries. The rear setback is heavily vegetated and overgrown.



**Figure 2: Zoning map of locality, with subject site outlined in yellow.**

**Figure 3: Heritage map of locality, with subject site hatched in red.**



***Figure 4: View of the primary façade of 36 Whaling Road, looking north-east from Whaling Road.***



***Figure 5: View of the primary façade of 34 Whaling Road, looking east from the intersection of Whaling Road and Margaret Street.***



**Figure 6: View of the northern frontage of 34 Whaling Road, looking east from Margaret Street.**

The subject site is located within the Whaling Road Conservation Area, and it generally consists of residential accommodation that typically reflect the characteristics of a R2 Low Density Residential and historical characteristics of the Conservation Area, such as single storey detached dwellings of Victorian Georgian, Victorian Filigree and Federation style. The existing subdivision pattern of the locality, primarily those to the south, south-east and north-west of the subject site largely feature a parallelogram or rectangular shape and have frontage lengths that vary from 5.5m – 7.8m.



**Figure 7: Aerial image of Whaling Road Conservation Area, taken circa 2008.**

## RELEVANT HISTORY

### Previous Applications

#### DA 1003/1984

- Application was lodged to Council on 13 January 1984.
- Proposed amalgamation of lots, resulting in the creation of a dual-occupancy dwelling.
- Application was approved by Council on 13 January 1984.

#### DA 222/2024

- Application was submitted onto the NSW Planning Portal on 3 September 2024
- Torrens title subdivision.
- Application was returned to the applicant on 3 September 2024.
  - Revised Statement of Environmental Effects required.
  - Revised Clause 4.6 variation request which accurately addresses the clauses in 4.6.
  - Notification plan required.

#### DA 278/2024

- Application was submitted onto the NSW Planning Portal on 9 October 2024
- Torrens title subdivision.
- Application was returned to the applicant on 14 October 2024.
  - Heritage Impact Statement required.
  - Notification plan required.

### Current Application

Date	Action
6 November 2024	The application was lodged to Council.
3 December 2024	Commencement of the notification period, which was notified to surrounding dwellings and the Anderson Precinct.
17 December 2024	Conclusion of the notification period. No submissions were received.
17 December 2024	Council issued the applicant a Request for Further Information, regarding the submission of site calculation plans for the proposed subdivided lots.
21 December 2024	Response to RFI provided by the applicant.

## INTERNAL REFERRALS

### ENGINEERING

The application has been referred to Council's Development Engineer who provided the following comments:

*The proposal has been assessed in relation to:*

- *Traffic Management*
- *Stormwater*
- *Parking and Access*



*In assessing the application, the following DCPs sections, Council's Codes and Infrastructure Guidelines are considered relevant to the proposed development:*

- *Section 10 – Car Parking and Transport*
- *Section 18 – Stormwater Drainage*

*Comments:*

*In reference to the proposed development, there are no engineering conditions that need to be imposed on any approved consent.*

**Planner's Comments:** This has been acknowledged and accepted.

## **HERITAGE**

The application has been referred to Council's Conservation Planner who provided the following comments:

### ***Heritage Status and Significance***

*34-36 Whaling Road NORTH SYDNEY 2060 is identified as a contributory item within the Whaling Road conservation area. The single storey brick building is a dual occupancy that has a hipped slate tiled roof and central projecting decorative gable end and timber framed windows and is from the significant period of development relating to the conservation area. The Whaling Road conservation area is significant as:*

- For its unity that relates to its subdivision history and which is evident in the development and streetscape of the area.*
- As a consistent and intact Victorian and Federation residential area that consists of modest housing on small lots.*
- As a largely intact late 19th and early 20th century subdivision that retains much of the urban fabric and detail associated with its development over time such the street formations, sandstone kerbing, fencing, gardens and a strong relationship to topography.*
- For the quality and collective significance of the buildings within the area*

*The following assessment for the Torrens Title subdivision considers the proposal against applicable planning controls and relevant elements from the statement(s) of significance.*

*The resultant subdivision of the property into two Torrens title lots will retain the built form of the dual-occupancy. The lot sizes will be compatible with existing lot sizes within the conservation area. The is consistent with the objectives of NDCP 2013 Part B: s13.4 Development within the vicinity of heritage items and s13.7 Subdivision and Lot Amalgamation. The proposal will not adversely impact on the setting, curtilage nor views to and from the heritage items in the vicinity of the site at 2A-6 Margaret Road/ 1-7 Margaret Road/ 6 Clarke Road/ 14 The Avenue.*

### ***Heritage Impact Assessment***

*With reference to the above, the proposal has been assessed in relation to Part 5 Clause 5.10 Heritage Conservation of the North Sydney LEP 2013 and relevant provisions of Section 13 Heritage and Conservation of the North Sydney DCP 2013 and is considered to be satisfactory.*

*The development satisfies the requirements for development involving a contributory item and no objection is raised to the proposal subject to the attached conditions.*

### ***Conclusion and Recommendation***

*With reference to the above, an assessment of the proposal has been undertaken in terms of North Sydney LEP 2013 Clause 5.10 Heritage conservation and North Sydney DCP 2013 Part B: Section 13 Heritage and Conservation. The proposal is acceptable on heritage grounds subject to conditions.*

**Planner's Comments:** Standard condition A2 has been imposed.

## **BUILDING**

The application has been referred to Council's Senior Building Surveyor who provided the following comments:

*The development application seeks approval for *Torrens title subdivision of a dual occupancy (attached) from one lot into two and change of use to two semidetached dwellings* to the property located at 34-36 Whaling Road, North Sydney (**the property**).*

*Given that there is not a change of use or building works involved with the application Clause 62 or 64 of the *Environmental Planning & Assessment Regulations 2021* is not applicable to the development.*

*Subsequently, Standard Conditions are recommended.*

**Planner's Comments:** Whilst it is noted that the Building Surveyors comments outline that there is no change of use, as mentioned throughout this report, by default, the subdivision changes the use of the existing dwellings from a dual occupancy (attached) to a pair of semidetached dwellings. Notwithstanding, the classification of the structures remain Class 1a under the NCC. Standard conditions imposed as per referral officers recommendations.

## **SUBMISSIONS**

### **Original Proposal**

On 2 December 2024, Council notified adjoining properties and the Anderson Precinct of the proposed development seeking comment between 3 – 17 December 2024, and Council received no submissions.

## **CONSIDERATION**

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), are assessed under the following headings:

### ***Environmental Planning and Assessment Act 1979 (as amended)***

#### ***SEPP (Biodiversity and Conservation) 2021***

- **Chapter 2 – Vegetation in Non-Rural Areas**

The proposal seeks the subdivision of one lot into two and subsequently the change of use of the dwellings. No works are proposed to any of the existing mature vegetation within the site. The application therefore satisfies the requirements of this Policy.

- **Chapter 6 - Sydney Harbour Catchment**

Having regard to Chapter 6 of the *SEPP (Biodiversity and Conservation) 2021*, the subject site is located within the Sydney Harbour Catchment Area. However, due to the inland location of the subject site, it can be deemed that the proposal will have no detrimental impacts on the surrounding waterways and its quality and quantity, what could occur during the events of a flood, aquatic ecology, recreational areas, public access and the characteristic of the foreshore. The application satisfies the requirements of this Policy.

#### ***SEPP (Resilience and Hazards) 2021***

- **Chapter 4 – Remediation of Land**

According to the history statement of the Whaling Road Conservation Area within the *NSDCP 2013*, the history of the locality has been centred around residential accommodation, with small-scale housing being constructed towards the latter half of the 20th Century. There is no mention of any potentially contaminating activities occurring on or near the land of the subject site. Furthermore, the development site has been used for the purpose of residential accommodation since circa 1984, and whilst the land use is changing, the primary use remains for the purpose of residential accommodation. The application therefore satisfies the requirements of this Policy and further investigation is not deemed necessary.

#### ***SEPP (Sustainable Buildings) 2022***

As the proposal is below the \$50,000 threshold and does not involve any physical works to the dwelling, the proposal does not trigger the requirement to submit a BASIX Certificate.

### ***NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP) 2013***

#### **1. Permissibility**

The proposed works are defined as a Torrens title subdivision of an attached dual occupancy from one lot into two, and subsequent change of use to a pair of semi-detached dwellings. These works are permissible with consent in the zone R2 Low Density Residential Zone.

## Land Use Provisions

Council notes that the SEE has remained silent on the land use changing as a result of the subdivision. The current, approved and operational land use on the site is a **dual occupancy (attached)**. This is defined in the *NSLEP 2013* as follows:

**dual occupancy** means a dual occupancy (attached) or a dual occupancy (detached).

**Note—** Dual occupancies are a type of **residential accommodation**—see the definition of that term in this Dictionary.

**dual occupancy (attached)** means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.

**Note—** Dual occupancies (attached) are a type of **dual occupancy**—see the definition of that term in this Dictionary.

As a result of the Torrens title subdivision, the development site can no longer be classified as a dual occupancy (attached), and the new applicable land use will be classified as follows:

**semi-detached dwelling** means a dwelling that is on its own lot of land and is attached to only one other dwelling.

**Note—**  
*Semi-detached dwellings are a type of residential accommodation—see the definition of that term in this Dictionary.*

Subsequently, the proposed development is defined as the Torrens title subdivision of one lot into two and the change of use to a pair of semidetached dwellings. Whilst it is noted that no physical works are proposed, any future applications for the site will need to consider controls relevant to the approved land use.

## 2. Objectives of the Zone

The objectives for a R2 Low Density Residential Zone are stated below:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.
- To ensure that a high level of residential amenity is achieved and maintained.

While the proposal would result in the change of land use, its primary use as residential accommodation within a low-density environment remains. The proposal would have no significant impact on the existing amenity levels of the subject site and neighbouring dwellings. It would also have no significant impact on surrounding natural and cultural items of heritage.

The proposed subdivision would also ensure consistency with the established subdivision patterns of surrounding subdivided dwellings and the characteristic elements of the Whaling Road Conservation Area, as outlined in Part C – Section 7 – Clause 7.3.4 of the NSDCP 2013, which includes irregular and regular rectilinear subdivision patterns which reflect the topography, and the original subdivision pattern with the boundary to street frontage. The proposal seeks to reinstate the original subdivision pattern that existed prior to DA 1003/1984.

#### Part 4 – Principal Development Standards

<b>COMPLIANCE TABLE – Principal Development Standards</b> <i>North Sydney Local Environmental Plan 2013</i>			
<b>Site Area - 565m<sup>2</sup></b>	<b>Proposed</b>	<b>Control</b>	<b>Complies</b>
Clause 4.1 – Minimum Subdivision Lot Size	Lot 1: 283.3m <sup>2</sup> Lot 2: 281.6m <sup>2</sup>	450m <sup>2</sup>	NO
Clause 4.3 – Height of Building	No change	8.5m	YES

##### 4.1. Minimum Subdivision Lot Size

The proposal involves subdivision of the land into two separate lots. The resultant site of Lot 1 comprises an area of 283.3m<sup>2</sup> and Lot 2 comprises an area of 281.6m<sup>2</sup>. As a result, the proposed lot sizes are non-compliant with the minimum subdivision lot size as stated in the *NSLEP 2013*.

To justify the non-complying elements, a written request to vary the development standard made pursuant to Clause 4.6 in *NSLEP 2013* has been submitted and is assessed below.

##### 4.6. Contravention of a Development Standard

A written request has been made to amend a clause within the *NSLEP 2013*;

- Clause 4.1 – Minimum Subdivision Lot Size

A written request to contravene the development standard for the minimum subdivision lot size has been submitted and has been considered below.

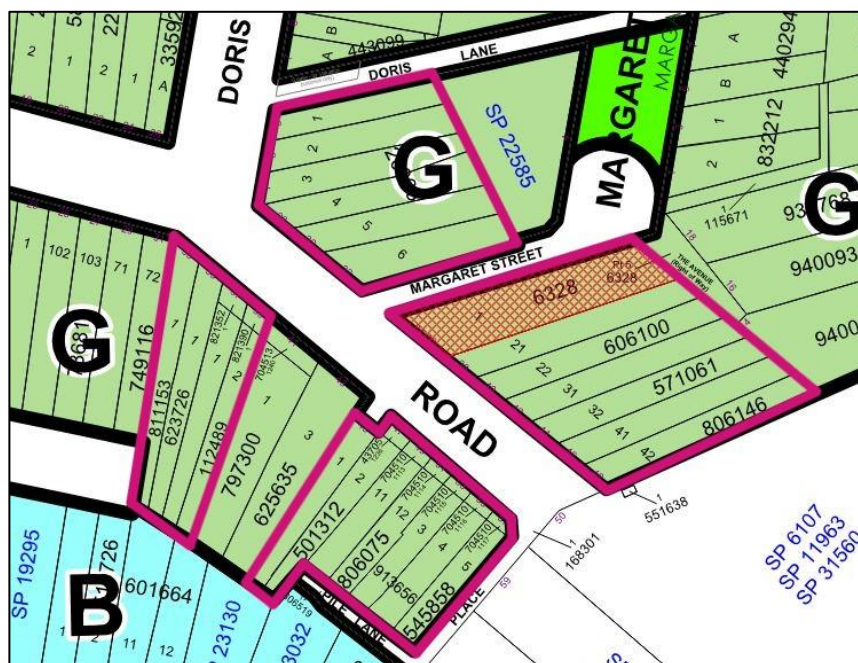
##### **Clause 4.6(3)(a) - Is compliance with the development standard unreasonable and unnecessary in the circumstances of the case?**

The most common way to determine whether that compliance with the development standard is unreasonable and unnecessary is to demonstrate that the objectives of the development standard are met notwithstanding the non-compliance. This is identified as test 1 in *Wehbe*.

*Wehbe v. Pittwater Council [2007] NSWLEC 827 (“Wehbe”)*.

- (1)(a) to ensure that subdivision and associated development promotes the desired future character of the neighbourhood through consistent lot size, shape, orientation and housing density,**

From observing the locality along Whaling Road, it is noted that the surrounding dwellings to the south-east and south have been previously subdivided into separate lots. Furthermore, it is also evident that these lots share a similar subdivision in both shape, frontage length and size. Figure 8 below shows the subdivided areas along Whaling Road that are in proximity to the subject site, which has been hatched in red.



**Figure 8: Subdivided areas along Whaling Road that are in proximity to the subject site, which have been outlined in red. The subject site has been hatched**

These lots share a similar parallelogram shape and a frontage length that varies from 5.5m – 7.8m. Regarding the lot areas, it is evident that these are non-compliant with the minimum lot size of 450m<sup>2</sup>, with the subdivided lots to the south-east of the subject site having areas measured between 274m<sup>2</sup> - 288m<sup>2</sup> with the smallest lot being 46 Whaling Road and the largest lot being 48 Whaling Road.

Taking into account the proposed subdivision of the subject site, Lots 1 and 2 would be of a parallelogram shape and have an area of 283.3m<sup>2</sup> and 281.6m<sup>2</sup> respectively. The resultant site areas are consistent with the established subdivision size and shape of the locality. The proposed frontage of Lot 1 would be 6.825m and Lot 2 would be 7.335m, again, maintaining consistency with established frontages along Whaling Road.

The proposal features no physical works to the dwelling, ensuring that the existing low-density of the site is maintained, consistent with the zoning.

As a result, it can be deemed that the proposed subdivision would promote the desired future character in terms of lot size, shape orientation and housing density.

**(1)(b) to maintain a mix of dwelling sizes and affordable accommodation,**

No changes proposed to the number of dwellings on site given no physical works are included as part of this application. As discussed throughout this report, by default, the land use is changing as a result of the type of subdivision proposed.

***(1)(c) to prevent fragmentation of land, which would prevent the achievement of the extent of development and nature of uses envisioned for particular locations,***

As outlined above in (1)(a), the proposed subdivision would reflect the existing subdivision pattern within the context of the street. It is reiterated that the development site was subdivided circa 1984 and the proposed development would reflect the previous site conditions.

***(1)(d) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,***

The built form of the dwellings is not changing, ensuring that the proposed subdivision would have no significant impact on the amenity levels of the neighbouring properties, in terms of overshadowing, view loss and visual and acoustic privacy.

***(1)(e) to ensure that lot sizes allow buildings to be sited to protect natural or cultural features, including heritage items, and retain special features, such as trees and views.***

The built form of the dwellings is not changing therefore the siting would be maintained. Notwithstanding, the Application was referred internally to Council's Heritage Conservation Planner, who has no issues with the subdivision, given it would be sympathetic to the HCA and maintain consistency with the subdivision pattern of the street. As a result, the proposed development is not considered to have any adverse impacts on natural and cultural features of the locality.

**Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify the variation?**

The environmental planning grounds outlined in the provided request seek to provide justification in the contravention of clause 4.1 of the *NSLEP 2013*. The following justifications were provided:

- 1. The proposal would create a subdivision pattern that would ensure consistency with the existing subdivision allotments within the locality.***
- 2. The proposal would alter the land use definition to a semi-detached dwelling, which would ensure consistency and compatibility with the existing built characteristics of the locality.***
- 3. The proposal would have no significant impact on the amenity levels of neighbouring dwellings.***

The environmental planning grounds outlined above are deemed to be satisfactory in providing justification for the contravention of clause 4.1 of the *NSLEP 2013*. As outlined in (1)(a) of the 'Wehbe test', it was evident that the proposed subdivision would create lots that would be consistent with the established characteristics of the subdivision lots within the locality in terms of shape, size and frontage length. The subdivision would also alter the land use definition of the site, from a dual occupancy to a semi-detached dwelling which would also be reflective of the existing land use definition of the subdivided properties in the locality. As the proposal does not include physical works to the dwelling, it can be deemed that the proposal would have no significant impact on the amenity levels of neighbouring dwellings.

**Clause 4.6(4)(a)(i) Applicant's written request**

The written request provided by the applicant adequately addresses the matters required by subclause (3) as discussed above.

### 4.3. Height of Building

As stated throughout the submitted Statement of Environmental Effects, the proposal only seeks the Torrens subdivision of the lot, and it does not feature physical works to the dwelling and would retain the existing building height. Subsequently, further consideration of Clause 4.3 of the *NSLEP 2013* is not warranted.

## Part 5 Miscellaneous Provisions

### 5.10. Heritage Conservation

Development consent is required under clause 5.10 of the *NSLEP 2013* as the subject site is a contributory item within the Whaling Road Conservation Area.

The proposal seeks the subdivision and subsequent change of use of the existing dwelling with no physical works proposed. The subdivision would retain the existing built form of the dwelling and would be compatible with the existing subdivision pattern along Whaling Road, while ensuring that views, settings and curtilage from the heritage items in proximity to the subject site are not significantly impacted.

Therefore, the proposed works comply with the conservation of heritage, in accordance with clause 5.10 of the *NSLEP 2013*.

## NORTH SYDNEY DEVELOPMENT CONTROL PLAN (NSDCP) 2013

The proposal has been assessment under the following heading within NSDCP 2013. Only the relevant controls within the NSDCP 2013 have been assessed.

<b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development</b>		
	<i>complies</i>	<i>Comments</i>
<b>1.2 Social Amenity</b>		
<b>1.2.1 Population Mix</b>	<b>YES</b>	No changes are proposed to the residential accommodation mix, although noting the land use does change by default given the type of subdivision proposed.
<b>1.2.2 Maintaining Residential Accommodation</b>		
<b>1.3 Environmental Criteria</b>		
<b>1.3.1 Topography</b>	<b>YES</b>	No physical works are proposed to the dwelling, ensuring that the existing topography and any surrounding natural landforms are maintained.
<b>1.3.6 Views</b>	<b>YES</b>	No physical works are proposed to the dwelling which would preserve the existing building height and envelope. As a result, the proposal would have no significant impact on the amenity levels of the neighbouring dwellings, in terms of views, solar access and visual and acoustic privacy.
<b>1.3.7 Solar Access</b>		
<b>1.3.8 Acoustic Privacy</b>		
<b>1.3.10 Visual Privacy</b>		
<b>1.4 Quality Built Form</b>		
<b>1.4.1 Context</b>	<b>YES</b>	No physical works are proposed to the dwelling which would preserve the existing building height and envelope. The proposed subdivision of the site would be considered to be within the context of the locality as it would be reflective of the established characteristics of the subdivided properties



		within the locality, in terms of shape, size and frontage length.								
<b>1.4.2 Subdivision Pattern</b>	<b>YES</b>	The resultant allotments would reflect the established subdivision pattern of the locality.								
<b>1.4.5 Siting</b>	<b>No change</b>	No physical works are proposed to the dwelling. As a result, the proposal would retain the existing orientation and siting of the dwelling.								
<b>1.4.6 Setbacks</b>	<b>No change</b>  <b>No Change</b>  <b>No Change</b>	<p><b>Front and Rear Setbacks:</b></p> <p>No changes to existing. The below measurements have been taken from the submitted survey plan.</p> <p><b>Lot 1:</b></p> <p><b>Side (North-Western) Setback:</b></p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Minimum Setback Requirement</th> <th>Existing</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">900mm</td> <td style="text-align: center;">700mm (minimum) 1m (maximum)</td> </tr> </tbody> </table> <p>No change to existing. It is worth noting that the north-western setback's is non-compliant. Further consideration of setbacks against merit is not applicable based on the nature of the development as proposed. Any future applications involving alterations and additions will provide an assessment against this control.</p> <p><b>Lot 2:</b></p> <p><b>Side (South-Eastern) Setback:</b></p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Minimum Setback Requirement</th> <th>Existing</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">900mm</td> <td style="text-align: center;">900mm (minimum) 1m (maximum)</td> </tr> </tbody> </table> <p>No change to existing.</p>	Minimum Setback Requirement	Existing	900mm	700mm (minimum) 1m (maximum)	Minimum Setback Requirement	Existing	900mm	900mm (minimum) 1m (maximum)
Minimum Setback Requirement	Existing									
900mm	700mm (minimum) 1m (maximum)									
Minimum Setback Requirement	Existing									
900mm	900mm (minimum) 1m (maximum)									
<b>1.4.7 Form, Massing and Scale</b> <b>1.4.8 Built Form Character</b>	<b>YES</b>	No physical works are proposed to the dwelling. As a result, the existing building height and envelope and internal floor to ceiling heights would be maintained, and the dwelling would continue to reflect the form and built characteristics of the locality.								
<b>1.4.9 Dwelling Entry</b>	<b>YES</b>	No changes proposed to existing arrangements.								
<b>1.5 Quality Urban Environment</b>										
<b>1.5.4 Vehicle Access and Parking</b>	<b>No change</b>	No changes proposed to existing arrangements.								
<b>1.5.5 Site Coverage</b>	<b>No Change</b>									

		<table border="1"> <tr> <th>NSDCP 2013 (Maximum)</th> <th>Proposed for Lot 1</th> <th>Proposed for Lot 2</th> </tr> <tr> <td>50%</td> <td>38% (107.4m<sup>2</sup>)</td> <td>37% (106.1m<sup>2</sup>)</td> </tr> </table> <p>No change to existing. Any future applications involving alterations and additions will provide an assessment against this control.</p>	NSDCP 2013 (Maximum)	Proposed for Lot 1	Proposed for Lot 2	50%	38% (107.4m <sup>2</sup> )	37% (106.1m <sup>2</sup> )						
NSDCP 2013 (Maximum)	Proposed for Lot 1	Proposed for Lot 2												
50%	38% (107.4m <sup>2</sup> )	37% (106.1m <sup>2</sup> )												
<b>1.5.6 Landscape Area and Un-built Upon Area</b>	<b>No Change</b>	<p><b>Landscape Area:</b></p> <table border="1"> <tr> <th>NSDCP 2013 (Minimum)</th> <th>Proposed for Lot 1</th> <th>Proposed for Lot 2</th> </tr> <tr> <td>30%</td> <td>53% (149.9m<sup>2</sup>)</td> <td>58% (160.4m<sup>2</sup>)</td> </tr> </table> <p>No change to existing. Any future applications involving alterations and additions will provide an assessment against this control.</p> <p><b>Un-built Upon Area:</b></p> <table border="1"> <tr> <th>NSDCP 2013 (Maximum)</th> <th>Proposed for Lot 1</th> <th>Proposed for Lot 2</th> </tr> <tr> <td>20%</td> <td>9% (26m<sup>2</sup>)</td> <td>5% (5m<sup>2</sup>)</td> </tr> </table> <p>No change to existing. Any future applications involving alterations and additions will provide an assessment against this control.</p>	NSDCP 2013 (Minimum)	Proposed for Lot 1	Proposed for Lot 2	30%	53% (149.9m <sup>2</sup> )	58% (160.4m <sup>2</sup> )	NSDCP 2013 (Maximum)	Proposed for Lot 1	Proposed for Lot 2	20%	9% (26m <sup>2</sup> )	5% (5m <sup>2</sup> )
NSDCP 2013 (Minimum)	Proposed for Lot 1	Proposed for Lot 2												
30%	53% (149.9m <sup>2</sup> )	58% (160.4m <sup>2</sup> )												
NSDCP 2013 (Maximum)	Proposed for Lot 1	Proposed for Lot 2												
20%	9% (26m <sup>2</sup> )	5% (5m <sup>2</sup> )												
<b>1.5.8 Landscaping</b>	<b>No change</b>	The existing landscaping/vegetation features are to be retained, and no new landscaping/vegetation features are to be proposed.												
<b>1.5.13 Garbage Storage</b>	<b>No change</b>	No changes to existing arrangements.												

## AREA CHARACTER STATEMENTS – PART C – SECTION 7 – NEUTRAL BAY PLANNING AREA

### Whaling Road Conservation Area

The subject site is situated within the Whaling Road Conservation Area of the Neutral Bay Planning Area. The area is characterised by detached single storey Victorian Georgian, Victorian Filigree and Federation dwellings on small lots, as well as two storey attached dwellings.

The proposed subdivision would ensure consistency with the established subdivision patterns of surrounding subdivided dwellings and the characteristic elements of the Whaling Road Conservation Area, as outlined in Part C – Section 7 – Clause 7.3.4 of the NSDCP 2013, which includes irregular and regular rectilinear subdivision patterns which reflect the topography, and the original subdivision pattern with the boundary to street frontage.

As no physical works are proposed, the proposal would retain the existing built form of the dwellings insofar maintaining the characteristic built elements of the Conservation Area.

## LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The proposed development is calculated to cost approximately \$5,000 which is less than the \$100,001 threshold. As a result, the North Sydney Local Infrastructure Contributions Plan is not applicable to this proposal.

## HOUSING PRODUCTIVITY CONTRIBUTION

The Ministerial Order for Housing Productivity Contribution came to effect on 1 July 2024.

The order applies to land in that includes the Greater Sydney Region in which North Sydney Council is located.

Part 2 Division 1 Clause 5 outlines that **Residential Development** is a development type that triggers a contribution should development consent is granted.

- (2) States that **Residential Development** means any of the following –
- (a) *subdivision of land (other than strata subdivision) on which development for the purposes of residential accommodation is permitted with development consent by an environmental planning instrument applying to the land (residential subdivision),*
  - (b) *medium or high-density residential development,*
  - (c) *development for the purposes of a manufactured home estate.*

Based on the subject development application, the application is seeking a Torrens subdivision of land which would create one new additional lot for the purposes of residential accommodation.

Schedule 2 outlines exemptions for this contribution, of which remains silent on matters such as the proposed development.

Division 2 Clause 7 sets out the base contribution amounts as follows:

Region	HPC class of development	Amount	HPC unit
Greater Sydney	Residential subdivision	\$12,000	new dwelling lot
	Medium or high-density residential development	\$10,000	new dwelling
	Commercial development	\$30	square metre of new GFA
	Industrial development	\$15	square metre of new GFA
Central Coast Illawarra-Shoalhaven Lower Hunter	Residential subdivision	\$8,000	new dwelling lot
	Medium or high-density residential development	\$6,000	new dwelling
	Manufactured home estate	\$6,000	new dwelling site
	Commercial development	\$30	square metre of new GFA
	Industrial development	\$15	square metre of new GFA

Division 2 Clause 12 sets out the calculation of the HPC for residential subdivision:

- (1) *The number of new dwelling lots for residential subdivision is the number of lots authorised by the development consent, less-*
- (a) *the number of existing potential dwelling lots, and*
  - (b) *the number of excluded lots.*

*Note. Residential subdivision does not include strata subdivision of residential accommodation.*

- (2) *An existing potential dwelling lot is a lot-*
- (a) *that exists when the development application for the HPC development is made, and*
  - (b) *on which residential accommodation is permitted with development consent by an environmental planning instrument applying to the land when the development consent is granted.*
- (3) *A proposed lot is an excluded lot if-*
- (a) *it is shown on the proposed plan of subdivision as intended to be dedicated for a public purpose such as a public road, public reserve or drainage reserve, or*
  - (b) *the development consent authorises only the carrying out of development for a purpose other than residential accommodation on the proposed lot, or*
  - (c) *the development consent authorises medium or high-density residential development on the proposed lot, or*
  - (d) *there is medium or high-density residential accommodation on the proposed lot when the development application is made and the development consent does not authorise its demolition, or*
  - (e) *there is an existing building on the proposed lot that-*
    - (i) *is used for a purpose other than residential accommodation, and*
    - (ii) *is not authorised to be demolished by the development consent, or*
  - (f) *it is association property within the meaning of the Community Land Development Act 2021, or*
  - (g) *it is only created for the purpose of rectifying an encroachment on an existing lot.*

As the proposal involves the creation of one new lot through a residential subdivision in North Sydney Council that is located within the Greater Sydney Region, the proposal is subject to a contribution of **\$12,000.00** in accordance with Clause 7 of the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023*.

Further details on the base contribution calculations are imposed within **Condition J1**.

#### **ALL LIKELY IMPACTS OF THE DEVELOPMENT**

All likely impacts of the proposed development have been considered within the context of this report.

<b>ENVIRONMENTAL APPRAISAL</b>	<b>CONSIDERED</b>
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	N/A
5. Traffic generation and Carparking provision	N/A
6. Loading and Servicing facilities	N/A
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	N/A
9. All relevant S4.15 considerations of <i>Environmental Planning and Assessment (Amendment) Act 1979</i>	Yes

### **SUBMITTERS CONCERNS**

On 2 December 2024, Council notified adjoining properties and the Anderson Precinct of the proposed development seeking comment between 3 – 17 December 2024, and Council received no submissions.

### **PUBLIC INTEREST**

The proposal is considered to be in the public interest for the following reasons:

- The development would be consistent with the conditions of the site circa 1984.
- The development site would be consistent with the established subdivision pattern within the street and wider HCA.
- There are no changes to the overall existing built form.
- There are no adverse impacts on surrounding properties.

Accordingly, the proposal is found to be within the public interest.

### **SUITABILITY OF THE SITE**

The proposal would be located in a R2 Low Density Residential zone, where a Torrens title subdivision of a dual occupancy (attached) from one lot into two and change of use to a pair of semi-detached dwellings is a permissible form of development. The proposal is found to be suitable for the site for the following reasons:

- The overall built form remains the same, whilst the resultant allotments reflect the site conditions circa 1984.

- The size and dimensions of the land accommodate the existing residential accommodation.
- The development maintains compatibility with the established subdivision pattern of surrounding developments.
- It satisfies the need for residential development within an area where demand outweighs supply.

Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

## **CONCLUSION**

The matters for consideration as outlined in section 4.15(1) of the Act have been satisfied. Torrens title subdivision of a dual occupancy (attached) from one lot into two and subsequent change of use to a pair of semi-detached dwellings is a permitted form of development in a R2 Low Density Residential Zone.

The proposed subdivision results in a non-compliance with the minimum subdivision lot size development standard outlined in Clause 4.1 of the *NSLEP 2013*. The written request made pursuant to Clause 4.6 Exceptions to development standards demonstrates that compliance with the development standard is both unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the variation. Approval of the variation would be in the public interest.

As the proposal does not include any physical works to the dwelling, there would be no significant impact on the existing amenity levels of neighboring dwellings in terms of overshadowing, view loss and acoustic and visual privacy.

On 2 December 2024, Council notified adjoining properties and the Anderson Precinct of the proposed development seeking comment between 3 – 17 December 2024, and Council received no submissions.

Having regard to the merits of the proposal, the application is recommended for approval subject to appropriate standard and site specific conditions for the reasons provided below.

## **RECOMMENDATION**

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

**THAT** the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in *NSLEP 2013* with regards to the non-compliance with Clause 4.1 and grant consent to Development Application No. 289/2024 for the Torrens title subdivision of a dual occupancy (attached) from one lot into two and subsequent change of use to a pair of semi-detached dwellings to on land at 34-36 Whaling Road, North Sydney subject to the following site specific and the attached standard conditions:

### **Housing and Productivity Contribution**

- J1. The housing and productivity contribution (HPC) set out in the table below, but as adjusted in accordance as shown under item (i) of this condition, is required to be made:

<b>Housing and productivity contribution</b>	<b>Amount</b>
Housing and productivity contribution (base component)	\$12,000.00
Transport project component	\$0
<b>Total housing and productivity contribution</b>	<b>\$12,000.00</b>

The amount payable at the time of payment is the amount shown as the total housing and productivity contribution for each stage specified in the tables to condition 2, adjusted by multiplying it by:

***highest PPI number***  
***consent PPI number***

where:

highest PPI number is the highest PPI number for a quarter following the June quarter 2023 and up to and including the 2nd last quarter before the quarter in which the payment is made, and

consent PPI number is the PPI number last used to adjust HPC rates when consent was granted, and

June quarter 2023 and PPI have the meanings given in clause 22 (4) of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

If the amount adjusted in accordance with this condition is less than the amount at the time consent is granted, the higher amount must be paid instead.

The HPC must be paid before the issue of any Subdivision Certificate.

The HPC must be paid using the NSW Planning Portal (<https://pp.planningportal.nsw.gov.au/>).

If the Minister administering the *Environmental Planning and Assessment Act 1979* agrees, the HPC may be made, instead of as a monetary contribution, in the following ways:

- a) the dedication or provision of land for the purpose of regional infrastructure in the region in which the development will be carried out,
- b) the carrying out of works for the purpose of regional infrastructure in the region in which the HPC development will be carried out.

If the HPC is made partly as a monetary contribution, the amount of the part payable is the amount of the part adjusted in accordance with item (i) in this condition at the time of payment. Each part of an instalment that is to be made as a monetary contribution is also to be adjusted in accordance with item (i) in this condition at the time its payment.

Despite the requirement of this condition, a housing and productivity contribution is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the *Environmental Planning and Assessment Act 1979* to the development, or the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023* exempts the development from the contribution. The amount of the contribution may also be reduced under the order, including if payment is made before 1 July 2025.

(Reason: To provide contribution as required by the *Environmental Planning and Assessment (Housing Productivity Contribution) Order 2023*)

**LUKA ABRAMOVIC**  
**GRADUATE ASSESSMENT OFFICER**

**ISOBELLA LUCIC**  
**TEAM LEADER ASSESSMENTS**

---

**STEPHEN BEATTIE**  
**MANAGER DEVELOPMENT SERVICES**

---



**NORTH SYDNEY COUNCIL**  
**CONDITIONS OF DEVELOPMENT APPROVAL**  
**34-36 WHALING ROAD, NORTH SYDNEY**  
**DEVELOPMENT APPLICATION NO. 289/24**

**A. Conditions that Identify Approved Plans**

**Development in Accordance with Plans/Documentation**

- A1. The development must be carried out in accordance with the following drawings endorsed with Council's approval stamp and other documentation listed in the table to this clause, or cited by other conditions, and as amended by other conditions of this consent.

<b>Plan No.</b>	<b>Description</b>	<b>Prepared by</b>	<b>Dated Issued</b>	<b>Date Received</b>
Sheet 1 of 1	Draft Subdivision	Paul Anthony Cechellero	19 August 2024	16 October 2024

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

**No Demolition of Extra Fabric**

- A2. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

**F. Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation**

**Appointment of Principal Certifier (PC)**

- F1. Building work, **demolition** or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifier for the building work in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory; To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

### Occupation Certificate

- F2. A person must not commence occupation or use of the whole or any part of a new building (new building includes an altered portion of, or an extension to, an existing building) unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifier appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

### G. *Prior to the Issue of an Occupation Certificate*

#### Sydney Water

- G1. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained.

The Section 73 Certificate must be submitted to the Principal Certifier prior to the issue of the Strata Certificate.

#### Notes:

Application must be made through an authorised Water Servicing Co-ordinator, for details see the Sydney Water web site [www.sydneywater.com.au/customer/urban/index](http://www.sydneywater.com.au/customer/urban/index), or telephone 13 20 92.

Following application, a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

(Reason: To ensure compliance with the statutory requirements of Sydney Water)

### J. *Prior To the Issue of Any Subdivision Certificate (Land/ Torrens/ Stratum)*

#### Housing and Productivity Contribution

- J1. The housing and productivity contribution (HPC) set out in the table below, but as adjusted in accordance as shown under item (i) of this condition, is required to be made:

<b>Housing and productivity contribution</b>	<b>Amount</b>
Housing and productivity contribution (base component)	\$12,000.00
Transport project component	\$0
<b>Total housing and productivity contribution</b>	<b>\$12,000.00</b>

The amount payable at the time of payment is the amount shown as the total housing and productivity contribution for each stage specified in the tables to condition 2, adjusted by multiplying it by:

***highest PPI number***  
***consent PPI number***

where:

highest PPI number is the highest PPI number for a quarter following the June quarter 2023 and up to and including the 2nd last quarter before the quarter in which the payment is made, and

consent PPI number is the PPI number last used to adjust HPC rates when consent was granted, and

June quarter 2023 and PPI have the meanings given in clause 22 (4) of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

If the amount adjusted in accordance with this condition is less than the amount at the time consent is granted, the higher amount must be paid instead.

The HPC must be paid before the issue of any Subdivision Certificate.

The HPC must be paid using the NSW Planning Portal (<https://pp.planningportal.nsw.gov.au/>).

If the Minister administering the *Environmental Planning and Assessment Act 1979* agrees, the HPC may be made, instead of as a monetary contribution, in the following ways:

- a) the dedication or provision of land for the purpose of regional infrastructure in the region in which the development will be carried out,
- b) the carrying out of works for the purpose of regional infrastructure in the region in which the HPC development will be carried out.

If the HPC is made partly as a monetary contribution, the amount of the part payable is the amount of the part adjusted in accordance with item (i) in this condition at the time of payment. Each part of an instalment that is to be made as a monetary contribution is also to be adjusted in accordance with item (i) in this condition at the time its payment.

Despite the requirement of this condition, a housing and productivity contribution is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the *Environmental Planning and Assessment Act 1979* to the development, or the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023* exempts the development from the contribution. The amount of the contribution may also be reduced under the order, including if payment is made before 1 July 2025.

(Reason: To provide contribution as required by the *Environmental Planning and Assessment (Housing Productivity Contribution) Order 2023*)

### **Registered Plans (Land/Torrens/Stratum)**

J2. The applicant must submit to Council's documentary evidence that the subdivision has been registered and the lot(s) exists. The use of the premise must not commence until the documentary evidence has been submitted to and approved by Council.

(Reason: To ensure that the allotments of land are created prior to the commencement of the approved use.)

### **Subdivision Certificate**

J3. A subdivision certificate that authorises the registration of a plan of subdivision at the NSW Land Registry Services must be obtained. The following must be submitted to Council with any application for a Subdivision Certificate:

- a) the original plans of subdivision and administration sheets plus two (2) copies of each, and any original 88B instrument to be endorsed, all **enclosed in a protective cardboard tube** (to prevent damage during transfer);
- b) 2 additional copies of both the plans and any 88B instrument for submission to Customer Services and records for electronic database scanning and copying;
- c) Application for Subdivision Certificate form duly completed with payment of fee current at lodgement;
- d) Written evidence that all applicable conditions of consent to be satisfied, prior to issue of the Subdivision Certificate, have been satisfied (including submission of all required certificates and the like); and
- e) All other information required by the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2021*.

#### **NOTES:**

- 1) Council will check the consent conditions on the relevant subdivision consent. Failure to submit the required information will delay endorsement of the plan of subdivision, and may require payment of rechecking fees.

**2) Plans of subdivision and copies must not be folded.**

**3) Council will not accept bonds in lieu of completing subdivision works.**

(Reason: To ensure compliance with relevant legislative requirements and maintenance of up-to-date Council records)

### **Sydney Water Compliance Certificate**

J4. A section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained prior to the release of a subdivision certificate.

The Section 73 Certificate must be submitted to the Principal Certifier or North Sydney Council with the documentation to enable the issue of the Strata Certificate.

#### **Notes:**

Application must be made through an authorised Water Servicing Co-ordinator, for details see the Sydney Water web site [www.sydneywater.com.au/customer/urban/index](http://www.sydneywater.com.au/customer/urban/index), or telephone 13 20 92.

Following application, a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

(Reason: To ensure compliance with Sydney Water requirements)

### **Services within Lots**

J5. A report must be provided by a Registered Surveyor certifying that all services (including but not limited to stormwater drainage, gas, electricity, telephone cable) as constructed or to be constructed are/will be contained within each lot or within the necessary easements to accommodate such services. The report must be submitted to the Principal Certifier for approval prior to the issue of any Subdivision Certificate.

(Reason: To ensure adequate servicing of the development)

### **Release of Subdivision Certificate**

J6. A Subdivision Certificate must not be issued until all conditions of this consent have been satisfied and the Final Occupation Certificate has been issued for the building.

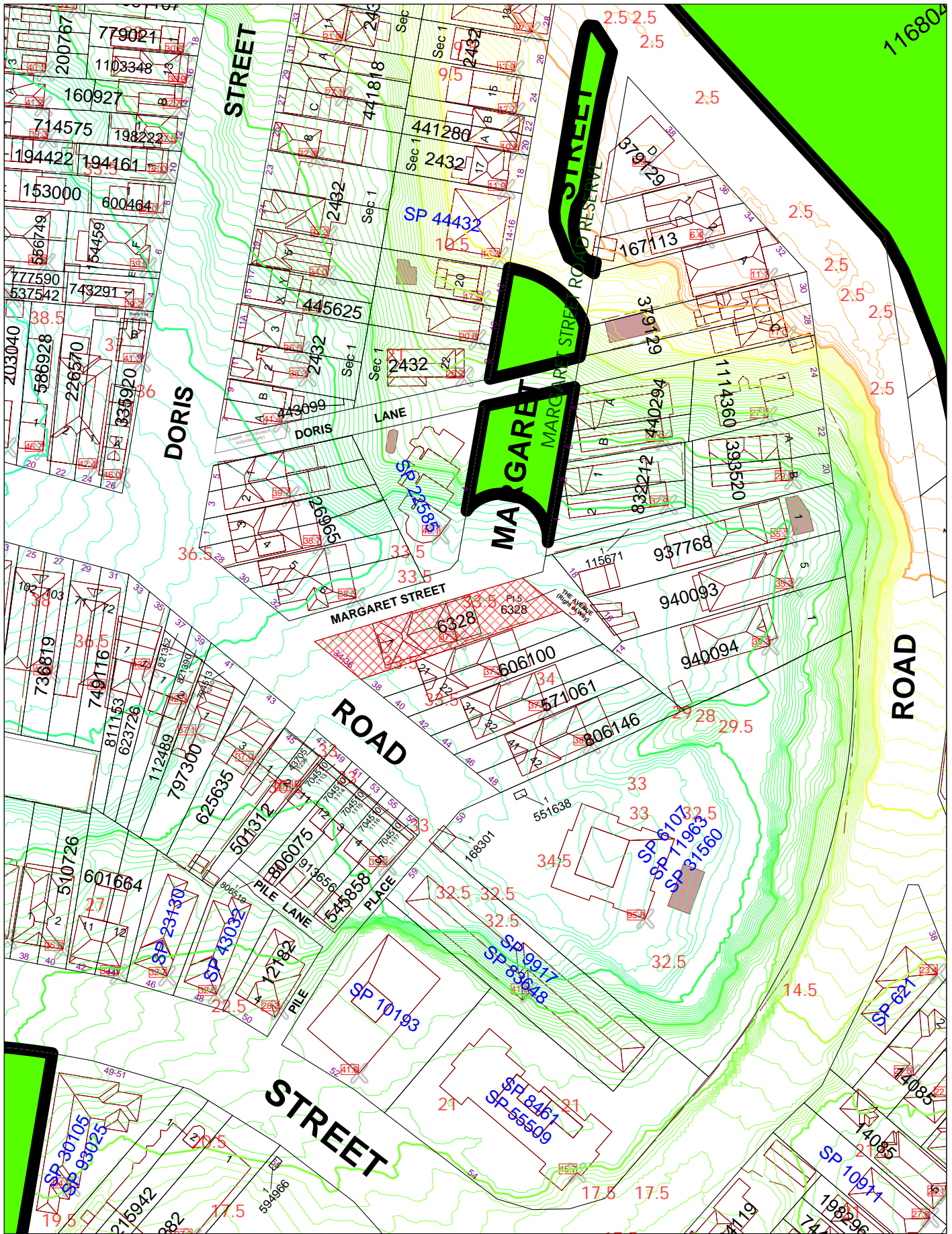
(Reason: To ensure that the development is completed to an acceptable standard prior to registration)

**Building and Unit Numbering**

- J7. Prior to issue any Subdivision Certificate, the person acting upon this consent must apply to North Sydney Council and receive written confirmation of the allocated street address (house number) and unit numbers for the building. These are the property addresses that will be recorded in Council records and must be displayed at the property in accordance with the provisions of the applicable Australian Standard (AS/NZS 4819:2011).

To assist Council a draft proposal for numbering should be submitted for concurrence to Council, as these numbers will be used to maintain Council's property and mapping database.

(Reason: To ensure that Council records are accurate, and that building and unit numbering complies with the requirements of Council's Property Addressing Policy. Proper building and unit numbering also assists emergency services in readily locating properties)

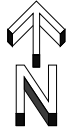


**North Sydney Council**

Copyright © North Sydney Council - No part of this map may be reproduced without permission. Commercial decisions should not be made based on information contained in this map without first checking details held by the responsible Government authority.

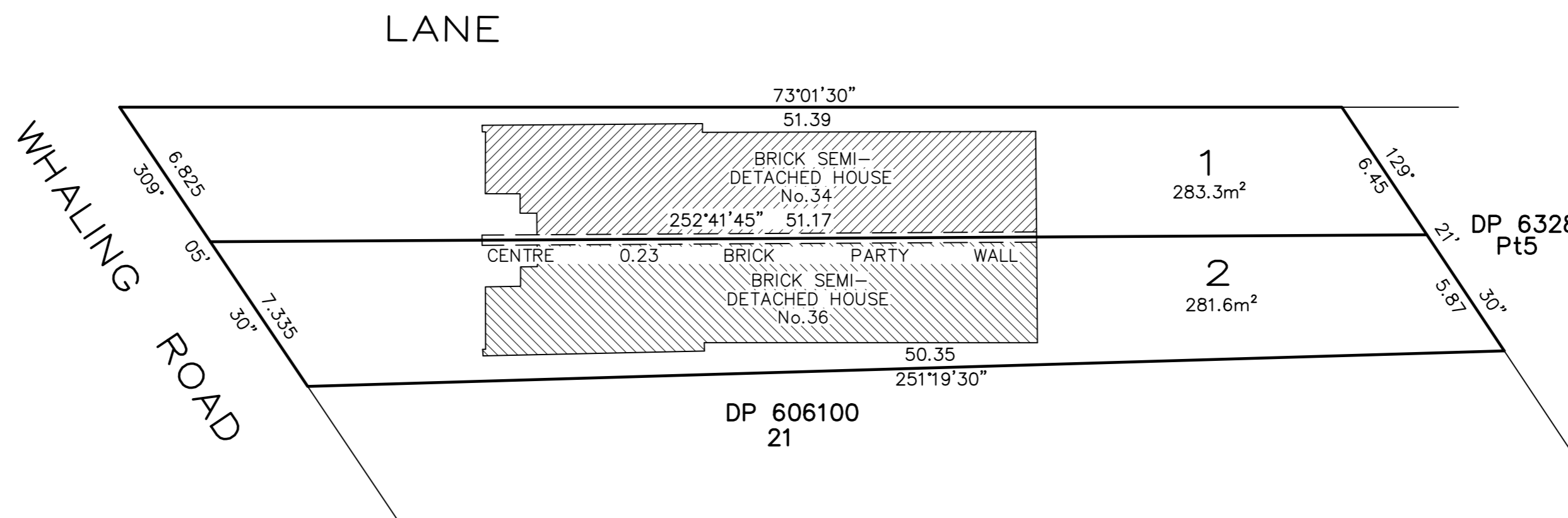
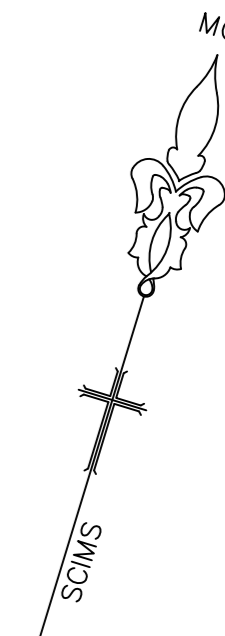
Further details can be obtained by calling (02) 9936 8100 or e-mail mapping@northsydney.nsw.gov.au.

Scale: 1:1200 approx.



# DRAFT SUBDIVISION

## LOT 1 DP 6328 BEING No.34-36 WHALING ROAD, NORTH SYDNEY.



AREAS, BEARINGS AND DIMENSIONS ARE APPROXIMATE ONLY  
 AND ARE SUBJECT TO FINAL SURVEY

Surveyor: PAUL ANTHONY CECELLERO Date of Survey: 19 AUGUST 2024 Surveyor's Ref: 65635	<b>PLAN OF SUBDIVISION OF LOT 1 DP 6328</b>	<b>L G A : NORTH SYDNEY</b> Locality: NORTH SYDNEY Subdivision No: <small>Lengths are in metres. Reduction Ratio 1:200</small>	Registered	<b>DP</b>
---	---	---	------------	-----------





**34–36 Whaling Road, North Sydney NSW 2060**

**REQUEST FOR VARIATION TO MINIMUM SUBDIVISION LOT SIZE  
STANDARD PURSUANT TO CLAUSE 4.6(3) OF NORTH SYDNEY  
LOCAL ENVIRONMENTAL PLAN 2013**

This Clause 4.6 variation relates to a proposal for the Torrens Title subdivision of the subject site into two allotments.

The proposal results in a non-compliance with clause 4.1 of the North Sydney Local Environmental Plan 2013 (**NSLEP**) which relates to minimum subdivision lot size (**lot size**). As such, this Clause 4.6 variation has been prepared in accordance with Clause 4.6 of the NSLEP, which applies to the subject site.

The request demonstrates that compliance with the development standard relating to FSR is unreasonable or unnecessary in the circumstances of the case and establishes that there are sufficient environmental planning grounds to justify contravening the development standard, satisfying clause 4.6(3) of the NSLEP.

Based on this Clause 4.6 variation, the consent authority can be satisfied that the written request has adequately addressed the matters required to be demonstrated by subclause (3), and that the proposed development will be consistent with the objectives of the lot size development standard.

The nature of the shortfall to the development standard relating to lot size is set out below, followed by consideration of the relevant matters in clause 4.6 of the NSLEP.

The NSW Department of Planning, Industry and Environment (DPI&E) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the Guide.

## Zoning of the site

The zoning of the land is R2 – Low Density Residential. The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services that meet the day to day needs of residents.*
- *To encourage the development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposal is limited to subdivision and does not lead to the reduction in or alteration to the existing semi-detached pair of dwellings on site, ensuring that housing remains on site that meets the needs of the community.

Given the dwellings are to be retained as existing, local amenity will be retained. The proposed subdivision is consistent with the other allotments in the block south of the Margaret Street.

The works will not prejudice the use of nearby land to be used to provide services or facilities to local residents. Accordingly, the proposal is consistent with the objectives of the R2 Zone.

## Clause 4.1 – Minimum subdivision lot size

### The Standard

The site has an area of 565m<sup>2</sup>.

Clause 4.1 of the NSLEP and the associated map prescribe a minimum lot size resulting out of subdivision of 450m<sup>2</sup>. The proposal seeks to Torrens title subdivide the site into two allotments with the following areas:

- Lot 1 (Northwest): 283.3m<sup>2</sup>
- Lot 2 (Southeast): 281.6m<sup>2</sup>

Accordingly, the proposal seeks consent for the following variations to the lot size standard:

- Lot 1 (Northwest): Variation of 166.7m<sup>2</sup>      45.46%
-

- Lot 2 (Southeast): Variation of 168.4m<sup>2</sup> 46.03%

### **The objectives of Clause 4.1**

The objectives of Clause 4.1 are as follows:

- (a) *to ensure that subdivision and associated development promotes the desired future character of the neighbourhood through consistent lot size, shape, orientation and housing density,*
- (b) *to maintain a mix of dwelling sizes and affordable accommodation,*
- (c) *to prevent fragmentation of land, which would prevent the achievement of the extent of development and nature of uses envisioned for particular locations,*
- (d) *to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,*
- (e) *to ensure that lot sizes allow buildings to be sited to protect natural or cultural features, including heritage items, and retain special features, such as trees and views.*

### **Clause 4.6 – Exceptions to Development Standards**

Clause 4.6 of the NSLEP allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

- (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.*

Clause 4.6(2) provides the power for development consent to be granted even though the development would contravene a development standard, subject to that clause:

- (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.*

Clause 4.6(3) sets out what a clause 4.6 written request seeking to justify a contravention of a development standard must demonstrate in order for consent to be granted for development that contravenes a development standard:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:*
- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *there are sufficient environmental planning grounds to justify contravening the development standard.*

The matters required to be demonstrated under clause 4.6(3) are set out below as Points 1 and 2.

Clause 4.6(4) requires that Council keep a record of its assessment carried out under Clause 4.6(3).

**1. Clause 4.6(3)(a) - Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:**

In order to assess whether strict compliance with the development standard is unreasonable or unnecessary, a proposal is considered against the following five ways<sup>1</sup>:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard; or
5. The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to the land.

These five ways were re-emphasised by the Court<sup>2</sup>. Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance<sup>3</sup>. All tests are separate and not all tests may be applicable in each case. Therefore, not all tests need to be met.

---

<sup>1</sup> see *Wehbe v Pittwater Council* [2007] NSWLEC 827

<sup>2</sup> *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386

<sup>3</sup> *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312

This variation relies on the first method set out above, that compliance with a standard is unreasonable and unnecessary given that the objectives of the standard are met even though the standard is not complied with<sup>4</sup>.

***Objective (a) to ensure that subdivision and associated development promotes the desired future character of the neighbourhood through consistent lot size, shape, orientation and housing density,***

***Comment:***

Desired future character is not defined in the NSLEP. In *Woollahra Municipal Council v SJD DB2 Pty Limited [2000] NSW 115* (hereafter, SJD no. 2), the Court held that in instances like this desired future character can be inferred from a number of matters, “including the development standards themselves, but also other factors, including approved development that contravenes the development standard.”<sup>5</sup>

In this regard, the proposed subdivision pattern is compatible with the lot sizes of all properties to the southeast Margaret Street. As shown in the figure below all properties south of the site have lot sizes similar to that proposed and it is only the subject site that has a lot size out-of-step with the area.

All allotments to the southeast contain semi-detached dwellings, exactly as is existing on the subject site with lot sizes comparable to that proposed. In accordance with the findings in the SJD no. 2, these allotments which vary the 450m<sup>2</sup> lot size standard help shape the desired future character of lots in the immediate area. As such, the proposed allotments are consistent with the desired future character of the area, despite the variation to the standard in the NSLEP.



Figure 1 Local Subdivision Pattern (Six Maps)

<sup>4</sup> *Wehbe v Pittwater Council [2007] NSWLEC 827, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 and Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245*

<sup>5</sup> *Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 at [63]*

We note that while there are significant elements of the streetscape that are provided for the Whaling Road Conservation Area in Part C of the North Sydney Development Control Plan 2013 (NSDCP) that could be used to demonstrate character, these “cannot be used to interpret the provisions of a local environmental plan, unless the provisions of the local environmental plan expressly refer to the provisions of the development control plan for that purpose”<sup>6</sup>.

The NSLEP does refer the desired future character objectives to the NSDCP. Notwithstanding this, the proposal does not include works to the existing dwellings, local topography or views and the proposed subdivision brings the site in line with the predominate pattern of the streetscape. As such, the proposal is in line with these significant elements.

Accordingly, the proposal meets objective (a).

***Objective (b) to maintain a mix of dwelling sizes and affordable accommodation,***

*Comment:*

The proposal is limited to the Torrens title subdivision and will not affect the number of dwellings provided on the site, which will remain at two single storey dwellings sharing a party wall. Accordingly, the proposal maintains the existing mix and size of dwellings in the area.

The proposal therefore meets objective (b).

***Objective (c) to prevent fragmentation of land, which would prevent the achievement of the extent of development and nature of uses envisioned for particular locations,***

*Comment:*

The site is located within the Whaling Road Heritage Conservation Area (HCA), which is an area characterised by low-scale Victorian and Federation style dwellings set within small allotments.

The heritage character of the Whaling Road HCA is largely intact and its listing suggests that Council does not envisage substantial future development in the area.

The proposal will not result in the fragmentation of land.

Accordingly, the proposal meets objective (c).

---

<sup>6</sup> *Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 at [46].*

***Objective (d) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,***

*Comment:*

The proposal is limited to Torrens title subdivision, with no works proposed to the existing structures, landscaping or landform. The subdivision will in effect only exist on paper and will not be apparent to a casual observer on Whaling Road.

Given that there are no material changes to the dwellings or the site, there will be no new impacts on local amenity, with solar access, views, privacy and visual impact. As such, the proposal is consistent with objective (d).

***Objective (e) to ensure that lot sizes allow buildings to be sited to protect natural or cultural features, including heritage items, and retain special features, such as trees and views.***

*Comment:*

The proposal is limited to subdivision and will not alter the building, its siting or landscaping on the site. All views are retained as existing. As detailed in the response to objectives (a) and (c), the proposed subdivision is compatible with the heritage of the Whaling Road HCA.

Accordingly, the proposal meets objective (e).

In summary, compliance with the development standard is unreasonable and unnecessary as the proposal will be consistent with the prevailing subdivision pattern and the proposed building height and bulk is unchanged and remains compatible with surrounding development and the desired future character for the locality. Importantly, the proposal meets the objectives of the development standard.

**2. Clause 4.6(3)(b) - There are sufficient environmental planning grounds to justify contravening the development standard:**

The variations to the minimum lot size controls are:

- |                      |                                  |        |
|----------------------|----------------------------------|--------|
| • Lot 1 (Northwest): | Variation of 166.7m <sup>2</sup> | 45.46% |
| • Lot 2 (Southeast): | Variation of 168.4m <sup>2</sup> | 46.03% |

In addition to the consistency of the proposal against the FSR objectives (see **Point 2 above**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard<sup>7</sup>.

---

<sup>7</sup> see *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [90]

There are sufficient environmental planning grounds which demonstrate that the proposed FSR can be achieved without adverse impacts for the following reasons:

### 1. The proposal results in a subdivision pattern that is more consistent with adjoining allotments

The subject site has an area of 565m<sup>2</sup> and as such is currently out-of-step with the subdivision pattern of the block in which it is situated. The site is located on the northeastern side of Whaling Road and is part of block defined by Margaret Street to the northwest, the Avenue to the north east and Whaling Road to the southwest. The subdivision pattern of this block is typified by allotments with areas ranging from 273.9m<sup>2</sup> to 288.75m<sup>2</sup>. This is similar to the areas proposed under this application, which are:

- Lot 1 (Northwest): 283.3m<sup>2</sup>
- Lot 2 (Southeast): 281.6m<sup>2</sup>



Figure 2 Local Subdivision Pattern (Six Maps)

### 2. The proposal results in a building comprised of a pair of semi-detached dwellings (one on each resulting allotment) which is a form of development that is compatible with the area

Presently, the site is large allotment containing a dual occupancy. This is considered out-of-step with the predominate character of development along the section of Whaling Road, which is semi-detached dwellings.

The block southeast of Margaret Street, in which the site is situated, is comprised entirely of semi-detached dwellings on narrow allotments. This is what will be provided following the subdivision of the site. Accordingly, the proposal will result in a form of development that is more in keeping with that of surrounding buildings





Figure 3 Semi-detached dwellings at Nos. 38, 40, 42, 44, 46 and 48 Whaling Road

### **3. The proposal will not give rise to any impacts on local amenity.**

The proposal includes no works to the existing building, with the proposal limited to subdivision of the site into two allotments. As such, the proposal will not give rise to any new impacts with regard to aural and visual privacy, views or solar access. Moreover, given that there are no apparent changes to the building, the proposal does not give rise to any visual impacts.

The lack of impact on adjoining properties in terms of solar access, privacy, view loss and visual bulk establishes sufficient planning grounds<sup>8</sup>.

### **3. Clause 4.6(5)**

In the context of the requirements of Clause 4.6(5), it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

### **Conclusion**

The proposal is consistent with the objects of Section 1.3 of the EP& A Act, 1979, which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land, to promote good design and amenity of the built environment and to protect the heritage of the built environment.

---

<sup>8</sup> *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [94(c)] and *Randwick City Council v Micaul Holdings Pty Ltd* at [34]

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to support the variation.

Based on this Clause 4.6 variation, the consent authority can be satisfied that the written request has adequately addressed the matters required to be demonstrated by subclause (3), and that the proposed development is consistent with the objectives of the lot size development standard under the NSLEP, in which the development is proposed to be carried out.



Boris Kozuchowski  
Consultant Planner  
aSquare Planning Pty Ltd

8 October 2024