

Ordinary Meeting

Meeting Date: Monday, 27 March, 2023
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.30pm

Membership (Quorum - 7)
All Councillors

Addendum Agenda

Reports

City Development

CL23.100 SF10948 – 13 Silver Sands Dr – Lot 6 DP 234796.....1

CL23.100 SF10948 – 13 Silver Sands Dr – Lot 6 DP 234796

DA. No: SF10948

HPERM Ref: D23/79503

Department: Development Services

Approver: James Ruprai, Director - City Development

Attachments:

1. Draft Notice of Determination [↓](#)
2. Section 4.15 Assessment Report [↓](#)
3. Subdivision Plan [↓](#)

Description of Development: One (1) into Two (2) Lot Torrens Title Subdivision of Existing Dual Occupancy

Owner: Majo Property Investments Pty Ltd, A J Schlaphoff, G P Schlaphoff

Applicant: Planning Development Commercial Lawyers Pty Ltd

Notification Dates: Notification not required in accordance with Section 3.3.1, Table 2 of the Community Consultation Policy. (Note: the proposal is for subdivision of an existing approved development. There is no material change to the development.)

No. of Submissions: NIL

Purpose / Reason for consideration by Council

In accordance with Planning System Circular No. PS20–002, the Secretary’s concurrence may not be assumed by a delegate of Council if the development contravenes a numerical standard by greater than 10% (a 36.08% variation to the development standard is proposed). Variations of this nature are instead required to be considered by the Council.

Recommendation

That Council:

1. Confirm that it supports the clause 4.6 variation of 29.9% for Lot 1 and 36.08% for Lot 2, with respect to the lot size of the proposed subdivision.
2. Approve the Development Application SF10954 for a one (1) into two (2) lot Torrens title subdivision of an existing and approved Dual Occupancy development at Lot 6 DP 234796 13 Silver Sands Drive, Berrara, as detailed in the draft conditions of consent (Attachment 1) to this report.

Options

1. That Council approve the recommendation as printed.

Implications: This would permit the subdivision of the subject site to go ahead. It is considered that support of the development would not jeopardise or lead to an abandonment of the minimum lot size requirement under cl. 4.1 of *Shoalhaven Local Environmental plan 2014* (SLEP).

CL23.100

This is due to the subdivision of dual occupancy development beneath the minimum lot size in the R2 Low Density Residential zone is permitted under cl. 4.1A(4).

Council has recently approved a similar DA at 68 Yeovil Drive Bombaderry (SF10873) and 111 Elizabeth Drive Vincentia (SF10923) at the Development & Environment Committee on 7 September 2021 [MIN21.623] and Ordinary Council Meeting on 9th of May 2022 [MIN22.327] respectively.

2. Refuse the Development Application (DA).

Implications: The development is unable to proceed as applied for. The applicant can, however, apply for a section 8.2A review of Council's decision and/or could lodge an appeal with the NSW Land and Environment Court (LEC) against Council's decision.

3. Adopt an alternative recommendation.

Implications: Council will need to specify an alternative recommendation and advise staff accordingly.



Figure 1 – Locality Plan

CL23.100



Figure 2 – Site Shown Highlighted in Yellow

Background

Proposed Development

The proposed development is to subdivide the approved attached dual occupancy dwelling that was approved on Lot 6 DP 234796 under DA17/1900 on 4th April 2018.

A subdivision plan prepared by Andrew George Johnson dated 29th January 2021 is included at Attachment 3.

A summary of the proposed lots is as follows:

- Proposed Lot 1 – is approximately 350.5m² with approximate average width of 7.75m and depth of 41.6 that fronts Silver Sands Drive.
- Proposed Lot 2 – is approximately 319.6m² with approximate average width of 7.955m and depth of 40.9m that fronts Edward Street.

The proposal is for subdivision only (of an existing and approved development) and therefore, the physical environment does not change from what was proposed in DA17/1900. No vegetation removal results from the proposal.

The proposed subdivision can be seen below in Figure 3:

CL23.100

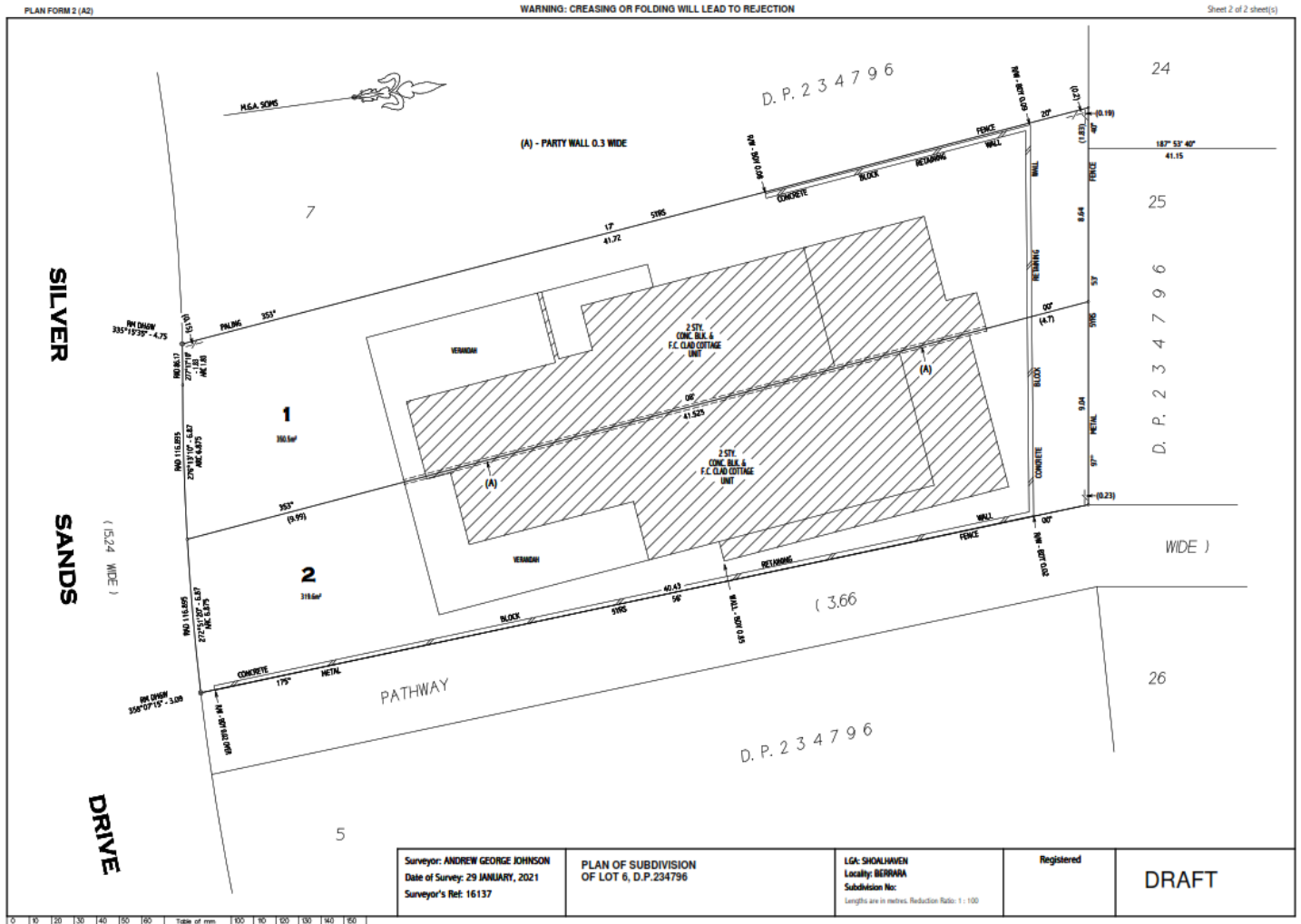


Figure 3: Subdivision Plan

Subject Land

The property is Lot 6 DP 234796 which is located at 13 Silver Sands Drive, Berrara (Subject Site). The subject site is approximately 1.6km south from the Cudmirrah village centre.

The site has an area of 670.1m², is irregular in shape and slopes slightly from the Northern boundary to the Southern boundary of 2.1m.

Site & Context

The site currently contains two (2) class one (1) dwelling houses and is bounded by low-density residential development to the north, south, east, and west. The dual occupancy subject to the subdivision application was constructed in 2019 with the Final Occupation Certificate issued in May 2020.

The locality is made of up of a combination of zonings. The subject site and most of the lots west, north, and east is zoned R2 Low Density Residential and the land to the south of subject site is RE1 Public Recreation. See Figure 4 below:

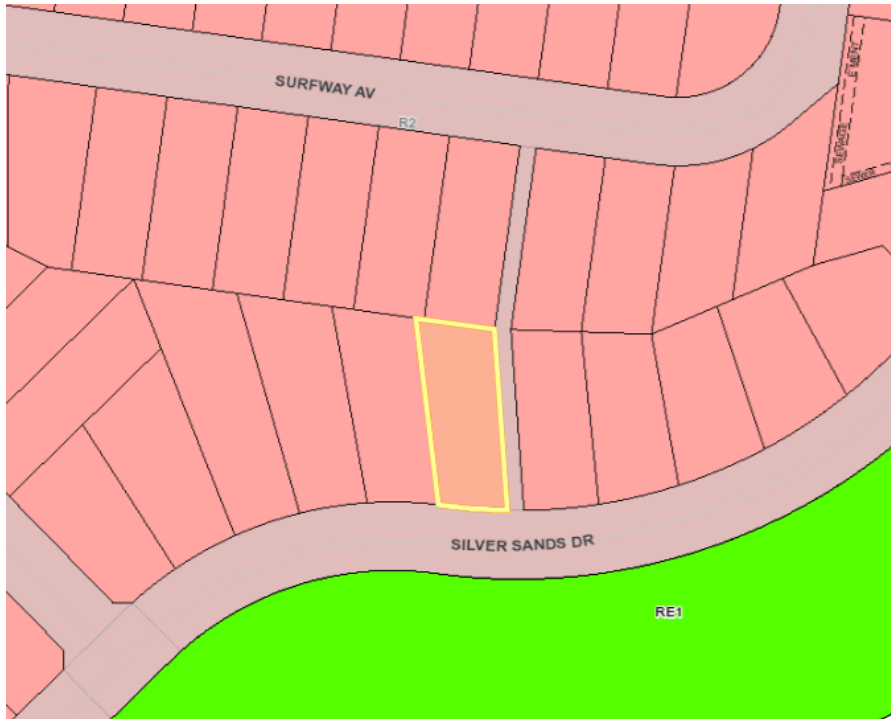


Figure 4: Zoning Map – SLEP 2014

Issue 1

Clause 4.1 – Minimum Subdivision Lot Size of SLEP 2014

The objectives of this clause are:

- (a) to ensure that subdivision is compatible with, and reinforces the predominant or historic subdivision pattern and character of, an area,
- (b) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,
- (c) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.

The SLEP 2014 includes a minimum lot size map, which overlays different minimum lot size requirements for land throughout the Local Government Area (LGA).

A minimum lot size of 500m² (l) applies to the site.

Development Standard to be Varied

The application seeks a variation to clause 4.1 Minimum subdivision lot size in accordance with clause 4.6 of SLEP 2014.

Clause 4.1 (3) states:

- (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

Extent of Variation

The table below outlines the proposed subdivision lot sizes and the extent of the variation under SLEP 2014 for each proposed lot.

Table 1. Clause 4.6 variation under SLEP 2014

Parent Lot = 670.1m ²	Lot size	Minimum lot size under SLEP 2014	Extent of variation	Departure to development standard
Proposed Lot 1	350.5m ²	500m ²	- 149.5m ²	29.9%
Proposed Lot 2	319.6m ²	500m ²	- 180.4m ²	36.08%

Under clause 4.6(4) of the *Shoalhaven Local Environmental Plan (SLEP) 2014*, development consent is not permitted to be granted for development that contravenes a standard unless the consent authority is satisfied that:

- the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- 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.

Written Request Provided by Applicant

The applicant has submitted a written request to justify the contravention of the development standard. Council is required to consider subclauses (3), (4) and (5) of Clause 4.6. Clause 4.6(3)-(5) are extracted from SLEP 2014 below:

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

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

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

- a) the consent authority is satisfied that:*
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and (b) the concurrence of the Secretary has been obtained.*

(5) In deciding whether to grant concurrence, the Secretary must consider:

- a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- b) the public benefit of maintaining the development standard, and*

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- c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Council must be satisfied that the abovementioned clauses have been addressed prior to granting development consent.

Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

To assess whether compliance with a development standard is unreasonable or unnecessary, the Land and Environment Court (LEC) has provided guidance in the required assessment.

This guidance has particular reference to the accepted "5 Part Test" for the assessment in *Wehbe v Pittwater Council* [2007] NSWLEC 827 noting also the principles outlined in *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46 and further clarified by *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

The "5-part Test" is outlined as follows:

1. The objectives of the development standard are achieved notwithstanding noncompliance 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 decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary.

The applicant does not rely on part 4 or 5 of the '5 Part Test' as it is not considered applicable. The argument put forward is focussed on parts 1 – 3.

- *Part 1 The objectives of the development standard are achieved notwithstanding noncompliance with the standard.*

The following table outlines the respective objectives of the minimum lot size requirement and the applicant's comments regarding how the proposed development is achieving the objective.

Clause 4.1 – Minimum Subdivision Lot Size	
Objective	Applicant Comment
To ensure that subdivision is compatible with, and reinforces the predominant or historic subdivision pattern and character of, an area,	<i>The subdivision proposed will be compatible with the historic subdivision pattern of the area.</i>
To minimise any likely impact of subdivision and development on the amenity of neighbouring properties,	<i>The subdivision of the site into two lots in the manner proposed will unlikely result in any unacceptable amenity impacts for neighbouring properties.</i>
To ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.	<i>The lots proposed are of a regular shape and of such a size that developing the same could be carried out in full compliance with Council's DCP.</i>

- Part 2 - The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary

The underlying objectives and purpose of the minimum subdivision lot size are relevant to the proposed development.

The underlying objective and purpose of the standard (clause 4.1 – Minimum Lot Size) is relevant and the above assessment has revealed that compliance with the objectives has been achieved notwithstanding the non-compliance with the numerical standard.

It is worth noting that compliance in this case is unnecessary, as the respective subdivision for *dual occupancy* development beneath the minimum lot size in the R2 Low Density Residential zone is now permitted under cl. 4.1A (4).

- Part 3 - The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

There is no utility in maintaining the minimum lot size development standard under cl. 4.1 in this case, as the respective subdivision for the *dual occupancy* beneath the minimum lot size is permitted under cl. 4.1A (4).

It is specifically noted that Council has recently approved a similar DA at 68 Yeovil Drive Bombaderry (SF10873) and 111 Elizabeth Drive Vincentia (SF10923) at the Development & Environment Committee on 7 September 2021 [MIN21.623] and Ordinary Council Meeting on 9 May 2022 [MIN22.327] respectively.

Clause 4.6(3)(a) Evaluation of the written request relating to Clause 4.6(3)(a)- Compliance with the development standard is unreasonable or unnecessary.

The consent authority must form the positive opinion of satisfaction that the applicant's written request(s) have adequately addressed those matters required to be demonstrated by clause 4.6(3)(a). The applicant has applied the first test established in *Wehbe v Pittwater* that the development standard is unreasonable or unnecessary in the circumstances of the case

because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The following justifications are made by the applicant:

It is noted that in addition to the objectives of Clause 4.1, Clause 4.1A (4) of the SLEP2014 also provides a framework for council to grant consent for subdivision into separate lots for dual occupancy (attached) in the R2 zone if the parent lot is equal or greater than 500m².

Clause 4.1A (4) explicitly permits variations to the minimum lot size standard subject to both the proposed dual occupancy and subdivision being considered as a single DA. Clause 4.1A (4) was gazetted on 11 August 2020 as Amendment 35 of SLEP 2014 subsequent to the consent for the dual occupancy being issued on 4 April 2018 under DA17/1900.

As such, compliance with the Clause 4.1A (4) would render compliance with the minimum lot size standard unreasonable and unnecessary. The proposed development is consistent with Clause 4.1A (4), (demonstrated in the SoEE), and therefore compliance with Clause 4.1 is unreasonable and unnecessary as the dual occupancy development already exists.

Comment: The above justification is considered reasonable. It is recommended that the consent authority can form the positive opinion that the applicant's written request(s) has satisfied clause 4.6(3)(a).

Clause 4.6(3)(b) Evaluation - There are sufficient environmental planning grounds to justify contravening the development standard

The consent authority must form the positive opinion that the applicant's written request has adequately addressed those matters required to be demonstrated by clause 4.6(3)(b).

To demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, held that the grounds relied upon by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26].

The adjectival phrase "environmental planning" is not defined but would refer to grounds that relate to the subject matter, scope, and purpose of the *Environmental Planning and Assessment Act 1979* (EPA Act,) including the objects in s 1.3 of the EPA Act.

The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient" (*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [24]). In [24] of the judgment, Preston CJ outlined the two methods for demonstrating that a Clause 4.6 is "sufficient" at paragraph [24] of case as follows:

First, *the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15].*

Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].” The applicant’s clause 4.6 variation request must provide a written justification that there are sufficient environmental planning grounds to justify contravening the development standard.

Applicant’s Response:

The Environmental Planning grounds in favour of the variation are as follows:

- a. The dual occupancy has already been constructed and the proposed subdivision will not physically change the appearance of the surrounding environment.
- b. The proposed lot size variation will not generate any unacceptable adverse environmental impacts in respect of overshadowing, view loss or privacy impacts.
- c. The land is not steep.
- d. Each lot has direct frontage to a public road.
- e. The lots are located in a high amenity area with good access to the nearby beach and foreshore reserve.
- f. The site is not mapped as being affected by coastal hazards / erosion.
- g. The proposal, if approved, will not result in any inconsistencies with other environmental planning instruments.
- h. The site is within an established residential area comprising a range of lot sizes. The locality is one subject to urban renewal through redevelopment and use of vacant land as well as replacement of existing housing stock.
- i. The proposed subdivision will not impact on either the built or natural environment in any substantial way. In this regard;
 - i.It will not result in any substantial changes to the established streetscape qualities of the area;
 - ii.The act of subdividing will not directly impact on neighbouring properties. Future development will be subject to building application requirements where issues including overshadowing, noise, and privacy will be addressed. The new building site would have good separation distances to adjoining dwellings.
 - iii.The act of subdividing the site will not result in any substantial changes to traffic volumes in the locality;
 - iv.Subdividing the site will not necessitate removal of any existing important vegetation;

Comment: The above justification has outlined the environmental planning grounds for the departure. It is recommended that the consent authority can form the positive opinion that the applicant's written request(s) has satisfied clause 4.6(3)(b).

Clause 4.6(4)(a)(ii) Evaluation – Public Interest

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless 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.

Pursuant to the provisions of the SLEP 2014 the land is zone R2 Low Density Residential, the objectives of which 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 to meet the day to day needs of residents.*
- *To provide an environment primarily for detached housing and to ensure that other development is compatible with that environment*

The proposed subdivision will continue to provide for the housing needs of the community. This is exhibited in the proposed subdivision creating separately titled lot for an existing dwelling in a dual occupancy development.

The proposed development is consistent with the objectives of the R2 zone. Under these circumstances the proposed development is in the public interest.

Clause 4.6 (b) – Concurrence of the Secretary

The Council assumes the concurrence of the Secretary in this instance, when considering the application.

Clause 4.6(5)(a) - Matters of Significance for State or Regional Planning

The non-compliance with the minimum subdivision lot size requirement development standard will not raise any matter of significance for State or Regional planning.

Clause 4.6(5)(b) - Public Benefit of Maintaining the Planning Control Standard

In the judgement of *Ex Gratia P/L v Dungog Council* [2015] (NSWLEC 148), Commissioner Brown of the NSW LEC outlined that the question that needs to be answered in relation to the application of clause 4.6(5)(b) is "*whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development*".

Comment: The applicant has demonstrated that the non-compliant lot-size will provide a better planning outcome as opposed to strict compliance with the development standard or amending the application to reduce or remove the extent of the variation.

Furthermore, there is no public benefit for strict compliance with cl.4.1 as the subdivision of dual occupancies is permitted beneath the minimum lot size requirements under cl. 4.1A (4) of the SLEP 2014.

Clause 4.6(5)(c) - Other matters

No other matters need to be taken into consideration by the Secretary

Planning Assessment

The DA has been assessed under s4.15 of the *Environmental Planning and Assessment Act 1979*. Please refer to Attachment A.

Consultation and Community Engagement:

Pursuant to Section 3.3.1, Table 2 of Council's Community Consultation Policy, development which involves a two (2) lot Torrens subdivision of an approved dual occupancy development is not required to be notified within the surrounding locality. This is because the subject application does not involve any significant physical works, does not change the approved development noting also that notification was already carried out as part of the assessment of the dual occupancy development within Council's approved Development Application No. DA17/1900.

Note: minor works are required by Shoalhaven Water – the Notice explains that sewerage is to be made available to each lot which requires a separate junction(s).

Financial Implications:

There are potential cost implications for Council in the event of a refusal of the application. Such costs would be associated with defending an appeal in the Land and Environment Court of NSW.

Legal Implications

Pursuant to section 8.2 of the EPA Act, a decision of the Council may be subject of a review by the applicant in the event of an approval or refusal. If such a review is ultimately pursued the matter would be put to Council for consideration.

Alternatively, an applicant may also appeal to the Court against the determination pursuant to section 8.7 of the EPA Act.

Summary and Conclusion

This application has been satisfactorily assessed having regard for section 4.15 (Evaluation) under the *Environmental Planning and Assessment Act 1979*.

Having regard to the assessment and the matters described in 'Issues' above, the clause 4.6 variation of the minimum subdivision lot size is acceptable and warrants support on its merits. As such, it is recommended that Development Application No. SF10948 be approved in accordance with the draft notice of determination at Attachment 1 to this Report.



Address all correspondence to: The Chief Executive Officer,
PO Box 42, Nowra NSW 2541 Australia
shoalhaven.nsw.gov.au/contact | 1300 293 111

shoalhaven.nsw.gov.au     

**NOTICE TO APPLICANT OF DETERMINATION OF APPLICATION
DEVELOPMENT CONSENT**

Environmental Planning and Assessment Act, 1979
SF10948

TO:

Planning Development Commercial Lawyers Pty Ltd
PO BOX 214
Wollongong NSW 2500

being the applicant(s) for SF10948 relating to:

13 Silver Sands Dr, BERRARA - Lot 6 - DP 234796

APPROVED USE AND OR DEVELOPMENT:

Proposed 2 Lot Torrens Title Subdivision of Dual Occupancy

DETERMINATION DATE:

To be Determined

Pursuant to the Section 4.18 of the Act, notice is hereby given that the above application has been determined by granting consent, subject to the conditions listed below.

CONSENT TO OPERATE FROM:

To be Determined

CONSENT TO LAPSE ON:

To be Determined

This consent is valid for five years from the date hereon.

In accordance with Section 4.53 of the Act, development consent for the use of the land or the erection of a building does not lapse if building, engineering or construction work relating to the building or work or the use is physically commenced on the land to which the consent applies before the lapse date.

DETAILS OF CONDITIONS:

The conditions of consent and reasons for such conditions are set out as follows:

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PART A: GENERAL CONDITIONS

1. General

The consent relates to the subdivision of an existing *dual occupancy* as documented on the stamped plans/documentation, or as modified by the conditions of this consent. The development must be carried out in accordance with this consent. If there is inconsistency between the stamped plans/documentation and the conditions of consent, the conditions prevail to the extent of that inconsistency.

Stamped plans/documents	Ref/sheet no.	Prepared by	Dated
Subdivision Plan	16137	Andrew George Johnson	19 th January 2021

Note: Any alteration to the plans and/or documentation must be submitted for the approval of Council. Such alterations may require the lodgement of an application to amend the consent under section 4.55 of the Environmental Planning and Assessment Act, or a new development application.

2. Prescribed Conditions

The development must comply with the [Prescribed Conditions of Development Consent](#), Division 2 Subdivision 1, Environmental Planning and Assessment Regulation 2021, as applicable.

3. Shoalhaven Water - Certificate of Compliance

A Certificate of Compliance must be obtained to verify that all necessary requirements for matters relating to water supply and sewerage (where applicable) for the development have been made with Shoalhaven Water. A Certificate of Compliance must be obtained from Shoalhaven Water after satisfactory compliance with all conditions as listed on the Notice of Requirements and prior to the issue of an Occupation Certificate, Subdivision Certificate or Caravan Park Approval, as the case may be.

An application for a Certificate of Compliance is to be made once the Development Consent has been granted.

PART B: INTEGRATED DEVELOPMENT AND CONCURRENCE CONDITIONS

NIL

PART C: PRIOR TO THE COMMENCEMENT OF WORKS

4. Subdivision Works Certificate

A Subdivision Works Certificate must be obtained from either Council or an accredited certifier prior to commencement of any subdivision work.

5. Appointment of Principal Certifier

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Prior to the commencement of building or subdivision work, a Principal Certifier must be appointed.

6. **Notice of Commencement**

Notice must be given to Council at least two (2) days prior to the commencement of building or subdivision work by completing and returning the form '[Commencement Notice for Building or Subdivision Work and Appointment of Principal Certifying Authority](#)'

PART D: PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

NIL

PART E: PRIOR TO THE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

7. **Compliance with Conditions**

A Subdivision Works Certificate must not be issued until the Certifier has received evidence that all relevant conditions have been met.

8. **Existing Services**

Prior to the issue of a Subdivision Works Certificate, the developer must check that the proposed works are not affected by or do not affect any Council electricity, telecommunications, gas, or other service. All services existing and proposed, above or below ground are to be shown accurately on the engineering plans including longitudinal sections with clearances to proposed infrastructure clearly labelled. Any required alterations to services will be at the developer's expense.

9. **Shoalhaven Water – Prior to the Issue of a Subdivision Works Certificate**

Prior to the issue of a Subdivision Works Certificate, all conditions listed on the Shoalhaven Water Notice of Requirements under the heading "Prior to the Issue of a Subdivision Works Certificate" must be complied with and accepted by Shoalhaven Water. Written notification must be issued by Shoalhaven Water and provided to the Certifier.

10. **National Construction Code**

Council considers it is appropriate to require the existing building to be upgraded to partial conformity with the National Construction Code (NCC) in force at the date of issue of the Subdivision Works Certificate. In this regard, the entire building is to be upgraded to meet the performance requirements of the NCC:

- a) Volume 2, Part 3.7 - Fire Safety
- b) Plumbing Code of Australia

Prior to the issue of a Subdivision Works Certificate, plans and specifications must be provided to the satisfaction of the Certifier, detailing how the existing building will be upgraded, as outlined above, to conformity with the NCC in force at the date of issue of the Subdivision Works Certificate.

The implementation of the upgrade works must not result in a NCC noncompliance.

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PART F: DURING WORKS

11. Hours for Construction

Construction may only be carried out between 7.00am and 5.00pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday. Proposed changes to hours of construction must be approved by Council in writing.

12. Excavation

Excavation must be carried out in accordance with *Excavation Work: Code of Practice (ISBN 978-0-642-78544-2)* published by Safe Work Australia in October 2018.

13. Aboriginal Objects Discovered During Excavation

If an Aboriginal object (including evidence of habitation or remains) is discovered during the course of the work:

- a) All excavation or disturbance of the area must stop immediately
- b) The Office of Environment, Energy and Science must be advised of the discovery in accordance with section 89A of the [National Parks and Wildlife Act 1974](#).

14. Archaeology Discovered During Excavation

If any object having interest due to its age or association with the past is uncovered during the course of the work:

- a) All work must stop immediately in that area
- b) In accordance with the *Heritage Act 1997*, the Office of Environment, Energy and Science must be advised of the discovery.

PART G: PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

NIL

PART H: PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

15. Compliance with DA17/1900

Prior to the issue of a Subdivision Certificate all works for Development Consent DA17/1900 must be completed and all conditions of consent satisfied, including construction of buildings, provision of all civil engineering works external to the site such as roads, driveways and kerb and gutter, fencing, landscaping, and a final Occupation Certificate must be issued for each dwelling.

A copy of the Occupation Certificate and evidence of completion of works must be provided to Council prior to the issue of a Subdivision Certificate.

16. Subdivision Certificate

A Subdivision Certificate must be obtained from Council or an accredited certifier prior to lodgement of the Final Plan of Survey with NSW Land Registry Services.

