

Wollongong Local Planning Panel Assessment Report | 20 April 2021

WLPP No.	Item 2
DA No.	DA-2020/1440
Proposal	Subdivision – Torrens title – two residential lots
Property	Lot 1 Sperry Street, Wollongong, Lot 1 DP 1132396
Applicant	Wollongong City Council (Property Division)
Responsible Team	Development Assessment and Certification - City Centre Team (RW)

ASSESSMENT REPORT AND RECOMMENDATION

Executive Summary

Reason for consideration by Wollongong Local Planning Panel - Determination

The proposal has been referred to Local Planning Panel for determination pursuant to clause 2.19(1)(a) of the Environmental Planning and Assessment Act 1979. Under 1(a) and 3, Schedule 2 of the Local Planning Panels Direction of 30 June 2020, Council is the applicant and landowner and the proposed development contravenes a development standard by more than 10% (minimum lot size).

Proposal

The proposal is for subdivision of existing Lot 1 DP 1132396 to create two Torrens title lots. The reason for the application is to dispose of surplus Council land and sell to adjoining owners for future consolidation.

Permissibility

The site is zoned R2 Low Density Residential pursuant to Wollongong Local Environmental Plan, 2009 (LEP2009). The proposal is categorised as subdivision and is permissible with development consent via Clause 2.6 of LEP2009.

Consultation

The proposal was notified in accordance with Council's Notification Policy. Two (2) submissions were received which are discussed at Section 1.5.

Main Issues

- Development departure to Clause 4.1 Minimum Subdivision Lot Size.

RECOMMENDATION

It is recommended that application be approved subject to the recommended conditions in Attachment 5.

this lot with Lot B, 19 Matthews Street, Wollongong has been provided from the landowners as part of the current application. It is Council's intention, in time, to look to subdivide and sell the residual portion (proposed Lot 11) to the other adjoining owners.

The SEE also states that the proposal is in accordance with Council's policy "Land Acquisition and Disposal" and the Independent Commission against Corruption's "Guidelines for Managing Risks in Direct negotiations".

There are no works proposed as part of the subdivision. The proposed subdivision plan forms Attachment 2.

1.3 BACKGROUND

DA-2017/142 - Subdivision - Torrens title - two (2) residential lots – withdrawn 31 July 2017

The above DA was reported to the (then) Independent Hearing and Assessment Panel (IHAP) on 19 July 2017. The Panel deferred the application to allow the applicant to address access and maintenance of the drainage infrastructure, including safety aspects, legalities (requiring an easement) and operation. Given the timeframe required to address these issues, DA-2017/142 was withdrawn noting that a new application could be resubmitted once these issues had been resolved.

In February 2019 DP1251323 was registered which created a 1.5m wide easement for access burdening Lot 72 Sec 3 DP 5507, 23 Matthews Street and benefitting Wollongong City Council. This easement now provides a legal means of access to the subject site to allow for ongoing maintenance, as shown in Attachment 3 which was a concern of the IHAP.

No pre-lodgement meeting was held for the proposal.

Customer service actions

There are no outstanding customer service requests of relevance to the development. A review of previous customer service requests indicates previous requests for clean-up of the existing land locked parcel made from adjoining landowners. Council maintenance of the site previously relied on access via private property which has been resolved through the creation of a 1.5m wide easement for access over Lot 72 DP 5507 (23 Matthews Street). Following the intended sale of proposed Lot 10 or the residual proposed Lot 11 maintenance would be the responsibility of the relevant private landowner/s.

1.4 SITE DESCRIPTION

The site is located at Lot 1 Sperry Street, Wollongong and the title reference is Lot 1DP 1132396. The existing Lot site area is 6.095m x 45.265m = 275.9m². There is an open water course running through the existing lot. The water course is piped to the east at Lot SP15405. The existing Lot 1 DP 1132396 was registered on 22 October 2008 and reference as a "Plan of drainage reserve formerly comprised in Lots 69, 70 & 71 Sec.3 DP5507 (Vol.4197 FOL.249)". Post subdivision the existing watercourse would run through proposed Lot 11. An aerial photo and zoning map forms Attachment 1.



Figure 2: Photo looking north towards subject site over 23 Matthews Street (location of 1.5m wide easement for access)



Figure 3: Proposed Lot 11 looking south towards Sperry Street (garage wall of adjacent eastern property 20 Northcote Street on left side of photo).



Figure 4: Area of existing lot at the rear of 19 Matthews Street (Proposed Lot 10)

Property constraints

- Council records identify the land as being located within a flood risk precinct (Classification under review). Council's development engineer has reviewed the application. No concerns have been raised in this regard to flood as no built form is proposed.
- Council records identify the land as being affected by class 5 acid sulphate soils. No works are proposed and no issues are raised in this regard.

There are no restrictions on the title, aside from the lot benefitting from an easement for access over the rear of 23 Matthews Street.

1.5 SUBMISSIONS

The application was notified between 15 and 29 January 2021 in accordance with Wollongong Community Consultation Plan 2019. Two (2) submissions were received and the issues identified are discussed below.

Table 1: Submissions

Concern	Comment
1. How will land be accessed? As there is no vehicle access how can this land be sold?	<p>The existing lot is accessed via a 1.5m wide Right of Access over 23 Matthews Street (corner of Sperry Street). This access is for the purpose of ongoing maintenance of the site.</p> <p>Following subdivision, proposed Lot 10 will be sold to 19 Matthews Street and consolidated into a single parcel of land, therefore vehicle access to the future consolidated site will remain in its current form (i.e. driveway access from Matthews Street).</p> <p>Proposed Lot 11 will continue to be accessed via the</p>

Concern	Comment
	Right of Access.
2. The land behind 19 Matthews Street is flood affected and is unsafe to use	The site is flood affected. No works are proposed under the current application. The relevant planning controls over Proposed Lot 10 will continue to apply following the subdivision and future consolidation with 19 Matthews Street.
3. Concern over future sale of landlocked sites	<p>Proposed Lot 10 is intended to be sold to adjoining 19 Matthews Street.</p> <p>Proposed Lot 11 would only be offered for sale to adjoining properties to increase the lot area of these lots, given that this lot is undevelopable in its own right. Where this occurs, existing access arrangements would remain noting that all adjoining sites have existing frontage to a public road.</p>
4. Concerns over resulting lots being sold and built on.	<p>Both the existing lot and the resulting lots are undevelopable in their own right as they are of insufficient size, are constrained by flooding and have no means of vehicle access.</p> <p>The purpose of the proposed subdivision is to sell a portion of the existing parcel of land (proposed lot 10) to the adjoining landowner for future consolidation, which will increase the area of that residential lot by 91.98m². Proposed Lot 11 is not able to be developed and will remain as a residual parcel of land in Council ownership until it can be disposed of to adjoining owners. If no adjoining neighbours wish to purchase Lot 11, the residual lot will remain in its current form and maintained by Council utilising the existing Right of Way.</p>
5. Concern over subdivision creating smaller unusable pockets of land which is in contravention of Wollongong LEP	<p>The existing lot does not meet the minimum lot size under Clause 4.1 of WLEP 2009. The subdivision will create two (2) smaller undersized lots, contrary to Clause 4.1.</p> <p>The purpose of the subdivision is for the sale of Lot 10 to 19 Matthews Street for future consolidation to create a larger residential lot. The applicant has noted that the consolidation is to be included as a requirement in the contract of sale. The remaining portion of existing Lot 1 (Proposed Lot 11) is a residual parcel of land and remains undevelopable as a stand-alone lot, as is currently the case.</p>
6. Easement loss – Lot 1 can currently be accessed through two easements – 23 Matthews Street and 20 Northcote Street. The proposed subdivision would cut off the easiest	The only legal means of access to the existing lot is over 23 Matthews Street via the 1.5m easement for access. Although informal access over 20 Northcote Street may have been used for the purpose of maintaining the subject site in the past, there is no easement for access

Concern	Comment
access to the creek.	over this site.
7. Environmental concerns	The existing site does contain a watercourse and is flood affected. The site is not identified as having biodiversity value or being unstable land.
Site is not suitable for anything other than a watercourse/vacant land.	
The watercourse floods in heavy rain and erosion occurs.	There is no vegetation or tree removal proposed as part of the current application and no construction works are proposed.
Vegetation clearance and impacts on flora and fauna	As proposed Lot 10 is intended to be consolidated with 19 Matthews Street, there are no concerns regarding the suitability of the site for the purpose of subdivision.

1.6 CONSULTATION

1.6.1 INTERNAL CONSULTATION

Subdivision Engineer

Council's development engineer has reviewed the application and has noted that the proposed subdivision will create two undersized lots and a boundary adjustment would be the preferred option so that two undersized lots are not created. However, this is not the application and the creation of the undersized lots are dealt with through a Clause 4.6 Statement which is discussed in Part 2.1.2 of this report. The proposed subdivision will facilitate the sale of the surplus land to the adjoining landowner (19 Matthews Street) and consolidation of proposed Lot 10 with the existing residential lot will be required as part of the future contract of sale. Conditions of consent were recommended which are included in the recommended conditions at Attachment 5.

1.6.2 EXTERNAL CONSULTATION

None required

2. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

1.7 Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994

This Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 that relate to the operation of this Act in connection with the terrestrial and aquatic environment.

NSW BIODIVERSITY CONSERVATION ACT 2016

The subdivision does not involve any works or the removal of any trees or use of land with biodiversity value.

2.2 SECTION 4.15(1)(A)(1) ANY ENVIRONMENTAL PLANNING INSTRUMENT

2.2.1 STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND

A desktop audit of previous land uses does not indicate any historic use that would contribute to the contamination of the site. There are no earthworks proposed and the proposal does not comprise a change of use. No concerns are raised in regard to contamination as relates to the intended use of the land and the requirements of clause 7.

2.2.2 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned R2 Low Density Residential

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

- *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*

The proposal is satisfactory with regard to the above objectives.

The land use table permits the following uses in the zone:

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Boat launching ramps; Child care centres; Community facilities; Dual occupancies; Dwelling houses; Environmental facilities; Exhibition homes; Exhibition villages; Group homes; Health consulting rooms; Home-based child care; Hospitals; Hostels; Information and education facilities; Jetties; Multi dwelling housing; Neighbourhood shops; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Shop top housing; Signage; Veterinary hospitals.

The subdivision is not a defined term but gains permissibility under Clause 2.6.

Clause 2.6 Subdivision—consent requirements

The proposed subdivision is permissible with consent under subclause (1).

Part 4 Principal development standards

Clause 4.1 Minimum subdivision lot size

The minimum lot size permitted for the site is 450m². The existing lot is less than 450m², having a site area of 275.9m². The proposal would create two lots that do not comply with the minimum lot size requirement. Proposed Lot 10 = 91.98m² and proposed Lot 11 = 184m².

The applicant submitted a request for variation to the standard in accordance with Clause 4.6 Exceptions to Development Standards of WLEP2009 which is considered in detail below. The applicant's 4.6 Statement forms Attachment 4.

Clause 4.6 Exceptions to development standards

WLEP 2009 clause 4.6 proposed development departure assessment	
Development departure	Clause 4.1 Minimum subdivision lot size
Is the planning control in question a development standard	Yes
4.6 (3) Written request submitted by applicant contains a justification:	
that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,	Yes (refer Attachment 4) The applicant's clause 4.6 submission contends that in the specific context of this case, the minimum lot size standard is unnecessary

and	<p>because</p> <ul style="list-style-type: none"> a. the minimum lot size is already failing to be observed in relation to the subject lot; and b. the creation and subsequent sale of the subdivided portion of the subject lot to an adjoining landowner in Matthews Street will only work to create greater compliance with:- <ul style="list-style-type: none"> i. the objectives of the minimum subdivision lot size control (clause 4.1(1)); ii. the promotion and coordination of the orderly and economic use and development of land, being objective 5(a)(ii) of the <i>Environmental Planning and Assessment Act 1979</i>. <p>The applicant's 4.6 submission further states that compliance with the control in the circumstances would result in the continued existence of a severely undersized lot with no useful or beneficial purpose, together with the existence of an adjoining residential land that is unable to benefit from increased land area, which does not promote consistency with the first objective of the R2 <i>Low Density</i> Residential Zone. The applicant further adds "It is recognised that Council's acceptance of the variation is dependent upon a Council commitment to sell proposed lot 10 to the adjoining landowner in Matthews Street and the applicant further adds that such confidence can be well founded."</p> <p>The applicant also refers to the second dot point in <i>Wehbe v Pittwater Council [2007] NSWLEC 827</i>, the underlying objective or purpose of the minimum lot size control would be defeated or thwarted if compliance was required.</p>
that there are sufficient environmental planning grounds to justify contravening the development standard.	<p>Yes</p> <p>The applicant's clause 4.6 submission makes reference to the decision of the Land and Environment Court in <i>Four 2 Five Pty Ltd v Ashfield Council [2015] NSWLEC</i>, there was support for the proposition that an applicant needs to show relevant environmental planning grounds that are particular to a proposed development, not merely grounds that would apply to any similar development on the site or in the vicinity.</p> <p>The applicant contends that can be achieved given the unique circumstances of the existing residential lots in Matthews Street and that a failure to vary the development standard in this instance will leave an effectively redundant and forever undeveloped or underutilised lot at the rear of residential development, in circumstances where that particular residential development can benefit from extra lot size where the subdivision is effected and the land sold to the adjoining land owner.</p> <p>The applicant further notes that the context is not an occasion where an applicant is seeking to justify the development of an</p>

	<p>undersized lot or an increase in floor space on general grounds relating to, for example, the provision of additional housing.</p> <p>The applicant contends that it would be a poor planning outcome to leave an effectively redundant, undersized lot in such close proximity to adjoining residential development.</p> <p>Such an approach is considered consistent with objective 1 of the R2 Low Density Residential Zone being, namely, to provide for the housing needs of the community within a low density residential environment and, ultimately, the objectives of the minimum lot subdivision size control itself which seeks to create, amongst other things, lots of a sufficient size to accommodate development.</p> <p>For completeness, the subject lot, if left un-subdivided, will never be of a sufficient size and shape to accommodate development. Accordingly, it would be antipathetic to the minimum subdivision lot size objective to leave it as it is.</p>
4.6 (4) (a) Consent authority is satisfied that:	
the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	The applicant has adequately addressed the matters required to be demonstrated by subclause (3) as discussed in detail above.
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	<p>It is considered that strict compliance with the minimum lot size standard in the context of the proposal site would not result in any significant public benefit. The applicant has demonstrated that subdivision can occur without detrimentally impacting the surrounding properties.</p> <p>The applicant has demonstrated that the proposed development would be consistent with the objectives of the minimum lot size standard (Clause 4.1(1)) which is summarised as follows:</p> <p><i>(a) to control the density of subdivision in accordance with the character of the location, site constraints and available services, facilities and infrastructure,</i></p> <p>The proposed subdivision of an already undersized lot would provide opportunity for sale and ultimate consolidation of proposed Lot 10 and residual proposed Lot 11 with adjoining existing residential lots on Matthews Street. No building works are proposed, no apparent additional density would occur. The character of the location would remain unchanged.</p> <p><i>(b) to ensure lots are of a sufficient size and shape to accommodate development.</i></p> <p>The proposed subdivision of an already undersized lot would provide opportunity for sale and ultimate consolidation of proposed Lot 10 and the applicant's intent of future sale of proposed Lot 11. The adjoining lots</p>

	<p>on Matthews Street are of a sufficient size to accommodate development. The existing undersized lot the subject of the subdivision application cannot currently accommodate development and no development is proposed as part of the subdivision application.</p> <p>The applicants has demonstrated that the proposed development would be consistent with the objectives of the R2 Low Density Residential Zone which is summarised as follows:</p> <ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a low density residential environment.</i> <p>The proposed subdivision is consistent with the objective as the subdivision would not preclude the opportunity for low density residential development to occur on adjoining lots. The existing undersized lot has no residential development potential. Subsequent sale of the proposed subdivided lots and consolidation with adjoining existing residential lots would create opportunity for those adjoining existing residential lots to benefit from increased land area within a low density residential development context.</p> <ul style="list-style-type: none"> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents</i> <p>The proposed subdivision does not preclude opportunity for other land uses to occur on adjoining land within the existing low density residential context. The existing undersized lot also has no existing development potential to provide other land uses.</p> <p>As discussed above there are sufficient environmental planning grounds to justify contravening the development standard.</p> <p>Compliance with the development standard would hinder the attainment of the objectives specified in section 5(a)(i) and (ii) of the EP&A Act in particular strict compliance could result in a poorer urban outcome where an existing undersized, underutilised lot would remain. The proposed development would result in orderly economic development.</p>
the concurrence of the Secretary has been obtained.	Yes – the concurrence of the Secretary is provided under delegation to Council.

Part 5 Miscellaneous provisions

Clause 5.2 Classification and reclassification of public land

The land is classified as operational land.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

No works are proposed as part of the subdivision proposal. Subsequent proposed sale of proposed Lot 10 and 11 to adjoining residential land allowing future consolidation. Those adjoining existing residential lots are already serviced by electricity, water and sewage services.

Clause 7.2 Natural resource sensitivity – biodiversity

The site is not identified as being affected by “Natural Resource Sensitivity – Biodiversity” on the Natural Resource Sensitivity – Biodiversity Map.

Clause 7.3 Flood planning area

No built form is proposed. The subdivision is essentially a paper subdivision. No concerns in regard to flooding are raised.

Clause 7.4 Riparian lands

The site is not identified in the Riparian Land Map as containing “riparian land”.

Clause 7.5 Acid Sulfate Soils

The proposal is identified as being affected by class 5 acid sulphate soils. No building works are proposed as part of the subdivision application. No concern is raised in regard to acid sulphate soils.

2.3 SECTION 4.15(1)(A)(II) ANY PROPOSED INSTRUMENT

None applicable

2.4 SECTION 4.15(1)(A)(III) ANY DEVELOPMENT CONTROL PLAN

2.4.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

CHAPTER A2 – ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Development controls to improve the sustainability of development throughout Wollongong are integrated into the relevant chapters of this DCP as detailed below.

CHAPTER B2 – RESIDENTIAL SUBDIVISION

The purpose of this chapter of the DCP is to provide Council’s detailed requirements for residential subdivision development upon land including R2 Low Density zoned land within which the proposed subdivision is located. Therefore, this chapter of the DCP applies. The application meets the DA lodgement requirements of the Chapter.

No residential development is proposed. Wollongong City Council is the applicant and owner proposed to dispose of the land. The existing lot is ‘land locked’ and undevelopable, with an easement for access to maintain the land available over 23 Matthews Street (refer DP 1251323 in Attachment 3)

The proposed subdivision is to create Lot 10 that is proposed to be sold to the owner of the property located at 19 Matthews Street to allow for future consolidation with that adjoining lot. It has also been stated by the applicant that the intention, in time, is to look to subdivide the residual portion (proposed Lot 11) to allow sale of that portion to other adjoining owners. The applicant states that proposed subdivision is in accordance with the requirements outlined in Land and Easement Acquisition and Disposal Policy, Wollongong City Council.

Existing adjoining residential lots currently meet the minimum lot size and dimension requirements for residential development outcome. Other relevant controls only of Chapter B2 are considered below:

<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
<u>5 Topography & natural landform</u>	The existing Lot is currently undersized and land locked. The lot in its current form has no development potential, being a watercourse. Proposed subdivision would allow sale and future consolidation with adjoining residential land.	Satisfactory
<u>7 Minimum allotment size requirements</u>	Considered in detail at Section 2.1.2 of this report.	Exception to development standard proposed see Section 2.1.2
<u>8 Lot width & depth requirements</u> Minimum lot width 12m	Minimum lot width would be achieved for proposed lot 10 and 11. Minimum depth currently not achieved. Existing land locked undersized lot. Subdivision proposed to allow disposal, sale to adjoining landowners and ultimate consolidation where lot depth would be achieved.	Satisfactory

CHAPTER D1 – CHARACTER STATEMENTS

West Wollongong

The proposal is considered to be consistent with the existing and desired future character for the locality.

CHAPTER E13 FLOODPLAIN MANAGEMENT and CHAPTER E14 STORMWATER MANAGEMENT

No building works are proposed however the subject site is flood affected. Council's development engineer considered the application and provided a satisfactory approval raising no concern with stormwater or flooding. It was noted that 19 Matthews Street (property to the west that Lot 10 is intended to be consolidated with) is currently identified as being flood affected.

2.4.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN (2019)

The estimated cost of subdivision is <\$100,000 and a levy is not applicable under this plan as the threshold value is \$100,000.

2.5 SECTION 4.15(1)(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 93F, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 93F

There are no planning agreements entered into or any draft agreement offered to enter into under S93F which affect the development.

2.6 SECTION 4.151(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

92 What additional matters must a consent authority take into consideration in determining a development application?

Not applicable - no demolition is proposed.

93 Fire safety and other considerations

Not applicable.

94 Consent authority may require buildings to be upgraded

Not applicable.

2.7 SECTION 4.151(B) THE LIKELY IMPACTS OF DEVELOPMENT

There are not expected to be adverse environmental impacts on either the natural or built environments. There are also not expected to be any adverse social or economic impacts in the locality.

This is demonstrated through the following:

- The proposal is satisfactory with regard to the applicable planning controls as detailed in the body of this report. A request for exception to LEP2009 development standard Clause 4.1 Minimum Subdivision Lot Size has been supported by satisfactory statement as considered in detail in Section 2.1.2 of this report.
- Issues raised in the submissions received following notification would not preclude the development.
- Internal referrals are satisfactory subject to appropriate conditions of consent and no external referrals were required.

2.8 SECTION 4.15 (1)(C) THE SUITABILITY OF THE SITE FOR DEVELOPMENT

Does the proposal fit in the locality?

The proposal is considered appropriate with regard to the zoning of the site and is not expected to have any negative impacts on the amenity of the locality or adjoining developments.

Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal.

2.9 SECTION 4.15(1)(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

Refer to Section 1.5.

2.10 SECTION 4.15(1)(E) THE PUBLIC INTEREST

The application is not expected to have any unreasonable impacts on the environment or the amenity of the locality. It is considered appropriate with consideration to the zoning and the character of the area and is therefore considered to be in the public interest.

3. CONCLUSION

This application has been assessed as satisfactory having regard to the Heads of Consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of

Wollongong Local Environmental Plan 2009 (LEP2009) and all relevant Council DCPs, Codes and Policies.

A request for exception to LEP2009 development standard 4.1 Minimum Subdivision Lot Size has been supported by satisfactory statement as considered in detail in Section 2.1.2 of this report. The proposed subdivision is consistent with the existing and desired future character of the area. Referrals are satisfactory and the submissions received during notification have been considered and the proposed subdivision is unlikely to result in significant adverse impacts on the amenity of the surrounding area.

4. RECOMMENDATION

It is recommended that the development application be approved subject to appropriate conditions of consent at Attachment 5.

5. ATTACHMENTS

- 1 Aerial photograph, WLEP 2009 zoning map
- 2 Plans
- 3 DP1251323 showing Right of Access to existing lot over 23 Matthews St
- 4 Applicant Clause 4.6 Statement
- 5 Recommended conditions

Attachment 1: Aerial photo and zoning map



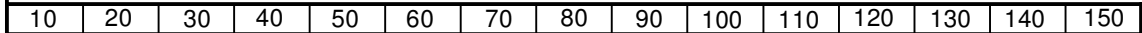
S P 6 8 0 9 7



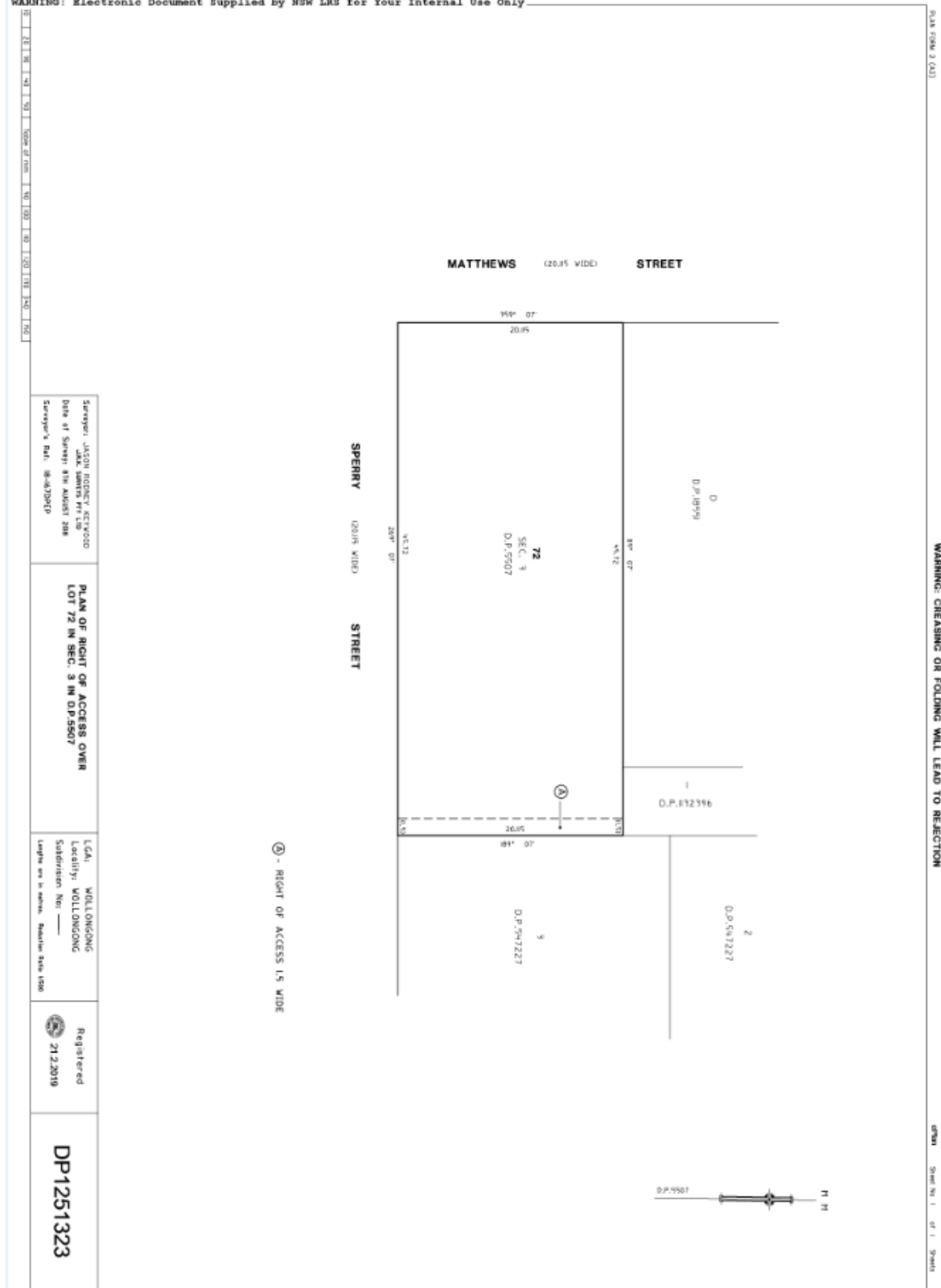
Surveyor: MURRAY SMITH
DENNIS SMITH SURVEYS
 8 Railway Street, Bulli NSW
 Ph: 02 4284 9402
 Date of survey: 17 - 11 - 2015
 Surveyor's ref.: 11029



L.G.A.: WOLLONGONG
Locality: WOLLONGONG
Subdivision no.:
Lengths are in metres.
Reduction ratio 1:300



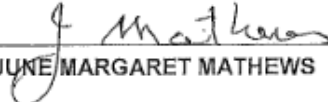
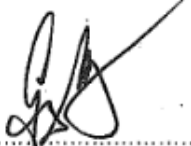

Registered



Box:e-DeX /Doc:DF 1251323 P /Rev:21-Feb-2019 /Sta:OK.OK /Pgs:ALL /Prt:22-Feb-2019 01:19 /Seq:1 of 3
WARNING: Electronic Document Supplied by NSW LRS for Your Internal Use Only



PLAN FORM 6 (2017)		DEPOSITED PLAN ADMINISTRATION SHEET	Sheet 1 of 2 sheet(s)
Registered:  21.2.2019 Title System: TORRENS		Office Use Only <div style="font-size: 2em; font-weight: bold; text-align: center;">DP1251323</div>	
PLAN OF RIGHT OF ACCESS OVER LOT 72 IN SEC.3 IN D.P.5507		LGA: WOLLONGONG Locality: WOLLONGONG Parish: WOLLONGONG County: CAMDEN	
Survey Certificate I, ... JASON RODNEY KEYWOOD of ... JRK SURVEYS PTY LTD, P.O. Box 2036, Woonona East 2517.. a surveyor registered under the <i>Surveying and Spatial Information Act 2002</i> , certify that: *(a) The land shown in the plan was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2017</i> , is accurate and the survey was completed on the or *(b) The part of the land shown in the plan ("being/excluding") was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2017</i> , the part surveyed is accurate and the survey was completed on the part not surveyed was compiled in accordance with that Regulation, or *(c) The land shown in this plan was compiled in accordance with the <i>Surveying and Spatial Information Regulation 2017</i> . Datum Line: Type: *Urban/*Rural The terrain is *Level/Undulating / *Steep/Mountainous. Signature:  Dated: 23-10-19. Surveyor Identification No: 1427 Surveyor registered under the <i>Surveying and Spatial Information Act 2002</i> *Strike out inappropriate words. **Specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey.		Crown Lands NSW/Western Lands Office Approval I, (Authorised Officer) in approving this plan certify that all necessary approvals in regard to the allocation of the land shown herein have been given. Signature: Date: File Number: Office:	
		Subdivision Certificate I, *Authorised Person/*General Manager/*Accredited Certifier, certify that the provisions of s.109J of the <i>Environmental Planning and Assessment Act 1979</i> have been satisfied in relation to the proposed subdivision, new road or reserve set out herein. Signature: Accreditation number: Consent Authority: Date of endorsement: Subdivision Certificate number: File number: *Strike through if inapplicable.	
Plans used in the preparation of compilation. D.P. 5507		Statements of intention to dedicate public roads, create public reserves and drainage reserves, acquire/resume land.	
Surveyor's Reference: 18-167DPEPA		Signatures, Seals and Section 88B Statements should appear on PLAN FORM 6A	

PLAN FORM 6A (2017) DEPOSITED PLAN ADMINISTRATION SHEET		Sheet 2 of 2 sheet(s)
<div>Office Use Only</div> <div>Registered:  21.2.2019</div> <div>PLAN OF RIGHT OF ACCESS OVER LOT 72 IN SEC. 3 IN D.P.5507</div> <div>Subdivision Certificate number:</div> <div>Date of Endorsement:</div>		<div>Office Use Only</div> <div>DP1251323</div> <div>This sheet is for the provision of the following information as required:<ul style="list-style-type: none">• A schedule of lots and addresses - See 60(c) SSI Regulation 2017• Statements of intention to create and release affecting interests in accordance with section 88B Conveyancing Act 1919• Signatures and seals- see 195D Conveyancing Act 1919• Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.</div>
<p>Pursuant to Sec.88B of the Conveyancing Act 1919, it is intended to create:</p> <p>1. Right of access 1.5 wide</p> <div><div> ERIC EDWARD MATHEWS</div><div> JUNE MARGARET MATHEWS</div></div> <div><div>Executed on behalf of Wollongong City Council By its Authorised Delegate pursuant to Sec. 377 of the Local Government Act 1993</div><div>I certify that I am an eligible witness and that the delegate signed in my presence.</div></div> <div><div> Name: GREG DOYLE</div><div> Name: ELIZABETH BORST</div></div> <div>Position: GENERAL MANAGER (ACTING) Address: WOLLONGONG CITY COUNCIL</div>		
<p>If space is insufficient use additional annexure sheet</p> <p>Surveyor's Reference: 18-167DPEPA</p>		

INSTRUMENT SETTING OUT TERMS OF RIGHT OF ACCESS INTENDED TO BE
CREATED PURSUANT TO SECTION 88B, OF THE CONVEYANCING ACT, 1919.

Lengths are in Metres.

(Sheet 1 of 4 Sheets)

Plan: **DP1251323**

Plan of Right of Access over
Lot 72 in Sec. 3 in D.P.5507

Full name and address of
Proprietors of the land.

Eric Edward Mathews
June Margaret Mathews
23 Matthews Street
WOLLONGONG NSW 2500

PART 1

Number of item shown in the intention panel on the plan	Identity of right of access to be created referred to in the plan	Burdened lots	Benefitted Authority
1	Right of Access 1.5 wide	72/3/5507	Wollongong City Council



INSTRUMENT SETTING OUT TERMS OF RIGHT OF ACCESS INTENDED TO BE
CREATED PURSUANT TO SECTION 88B, OF THE CONVEYANCING ACT, 1919.

Lengths are in Metres.

(Sheet 2 of 4 Sheets)

Plan: **DP1251323**

Plan of Right of Access over
Lot 72 in Sec. 3 in D.P.5507

PART 2

**1. TERMS OF RIGHT OF ACCESS FIRSTLY REFERRED TO IN THE
ABOVEMENTIONED PLAN**

1. The authority having the benefit of this easement may:
 - a) By any reasonable means pass across the lot burdened, but only within the site of this easement, for the purpose of exercising or performing any of its powers, authorities, duties or functions, and
 - b) Do anything reasonably necessary for passing across the lot, including:
 - Entering the lot burdened, and
 - Taking anything on to the lot burdened, and
 - Carrying out work within the site of this easement being for the maintenance and cleaning of the creek.
2. In exercising those powers, the body having the benefit of this easement must:
 - a) Ensure all work is done properly, and
 - b) Cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
 - c) Cause as little damage as is practicable to the lot burdened and any improvement on it, and
 - d) Restore the lot burdened as nearly as is practicable to its former condition, and
 - e) Make good any collateral damage.


E/B

INSTRUMENT SETTING OUT TERMS OF RIGHT OF ACCESS INTENDED TO BE
CREATED PURSUANT TO SECTION 88B, OF THE CONVEYANCING ACT, 1919.

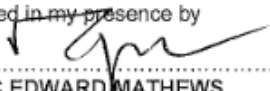
Lengths are in Metres.

(Sheet 3 of 4 Sheets)

Plan: **DP1251323**

Plan of Right of Access over
Lot 72 in Sec. 3 in D.P.5507

Signed in my presence by


ERIC EDWARD MATHEWS
Who is personally known to me

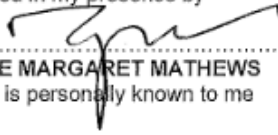

Proprietor

Signature of Witness

Name of Witness (BLOCK LETTERS)

~~Michael Francis Gable~~
Solicitor
19/30 Market Street
Wollongong NSW 2500
(Address and Occupation of Witness)

Signed in my presence by


JUNE MARGARET MATHEWS
Who is personally known to me


Proprietor

Signature of Witness

Name of Witness (BLOCK LETTERS)

~~Michael Francis Gable~~
Solicitor
19/30 Market Street
Wollongong NSW 2500
(Address and Occupation of Witness)

INSTRUMENT SETTING OUT TERMS OF RIGHT OF ACCESS INTENDED TO BE
CREATED PURSUANT TO SECTION 88B, OF THE CONVEYANCING ACT, 1919.

Lengths are in Metres.

(Sheet 4 of 4 Sheets)

Plan: **DP1251323**

Plan of Right of Access over
Lot 72 in Sec. 3 in D.P.5507

Executed on behalf of Wollongong City Council
By its Authorised Delegate pursuant to
Sec. 377 of the Local Government Act 1993

I certify that I am an eligible witness
and that the delegate signed in my
presence.

Name:


Name:

Position:

Address:

THE COMMON SEAL OF THE COUNCIL
OF THE CITY OF WOLLONGONG
WAS HEREUNTO AFFIXED THIS

DAY OF
PURSUANT TO A RESOLUTION OF
THE COUNCIL PASSED ON THE
DAY OF


LORD MAYOR


GENERAL MANAGER (ACTING)
GREG DOYLE

REGISTERED



21.2.2019

REQUEST TO CONTRAVENE DEVELOPMENT STANDARD

Proposed subdivision of land, being Lot 1 DP1132396, into two Torrens title lots

Wollongong City Council is the applicant for the proposed subdivision of land, being Lot 1 DP1132396, into two separate Torrens title lots.

The subject lot is currently owned by Council and operates as a functioning watercourse.

The intention of the application is to create two lots, where one can be sold to the adjoining landowners at Matthews Street, Wollongong. It is Council's intention, in time, to look to subdivide and sell the residual portion to the other adjoining owners.

As part of its assessment of the development application, Council has properly identified that Council's subdivision proposal would result in the creation of undersized allotments.

Accordingly, this request is submitted to Council pursuant to clause 4.6 of the Wollongong Local Environmental Plan 2009 (Wollongong LEP 2009), seeking to justify the contravention of the minimum lot size development standard.

Minimum Subdivision Lot Size

Whilst subdivision is permitted with consent under the Wollongong LEP 2009, clause 4.1 of the LEP applies to a subdivision of any land shown on the lot size map. Importantly, clause 4.1(3) provides that:-

"The size of any lot resulting from 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."

Under the Lot Size Map that applies to Sperry Street, the minimum lot size is 450m².

Given that the development application proposes subdivision of a lot with an existing area of 275.9m² into 91.98m² (proposed Lot 10) and 184m² (proposed Lot 11), the application cannot be approved without compliance with clause 4.6 of the Wollongong LEP.

As Council is aware development consent may, subject to clause 4.6, be granted for development even though the development would contravene a development standard imposed by the LEP.

Clause 4.6 Justification

Pursuant to clause 4.6, an applicant must provide a written request that demonstrates:-

- 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.

This submission deals with A and B in turn below.

The Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

The subject lot sought to be subdivided is 275.9m² in size.

The zoning of the subject lot, together with surrounding land, is R2 Low Density Residential under the Wollongong LEP 2009.

In the specific context of this case, the minimum lot size development standard is unnecessary because:-

- a. the minimum lot size is already failing to be observed in relation to the subject lot; and
- b. more importantly, the creation and subsequent sale of the subdivided portion of the subject lot to an adjoining landowner in Matthews Street will only work to create greater compliance with:-
 - i. the objectives of the minimum subdivision lot size control (clause 4.1(1));
 - ii. the promotion and coordination of the orderly and economic use and development of land, being objective 5(a)(ii) of the *Environmental Planning and Assessment Act 1979*.

In other words, compliance with the control in the circumstances of this case would result in the continued existence of a severely undersized lot with no useful or beneficial purpose, together with the existence of an adjoining residentially-utilised lot that, whilst meet the minimum lot subdivision size, is unable to benefit from increased land area, which does not promote consistency with the first objective of the R2 *Low Density* Residential Zone (emphasis added).

To put it another way, and consistent with the second dot point in *Wehbe v Pittwater Council* [2007] NSWLEC 827, the underlying objective or purpose of the minimum lot size control would be defeated or thwarted if compliance was required.

It is recognised that Council's acceptance of the variation is dependent upon a Council commitment to sell proposed lot 10 to the adjoining landowner in Matthews Street. In this submission, such confidence can be well founded.

Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

In the decision of the Land and Environment Court in *Four 2 Five Pty Ltd v Ashfield Council* [2015] NSWLEC, there was support for the proposition that an applicant needs to show relevant environmental planning grounds that are particular to a proposed development, not merely grounds that would apply to any similar development on the site or in the vicinity.

Happily, that can be achieved in this particular instance, given the unique circumstances of the existing residential lots in Matthews Street.

A failure to vary the development standard in this instance will leave an effectively redundant and forever undeveloped or underutilised lot at the rear of residential development, in circumstances where that particular residential development can benefit from extra lot size where the subdivision is effected and the land sold to the adjoining land owner.

This is not an occasion where an applicant seeks to simply justify the development of an undersized lot or an increase in floor space on general grounds relating to, for example, the provision of additional housing. Rather, in the very particular circumstances of this case, it would be a poor planning outcome to leave an effectively redundant, undersize lot in such close proximity to adjoining residential development.

Such an approach is entirely consistent with objective 1 of the R2 Low Density Residential Zone being, namely, to provide for the housing needs of the community within a low density residential environment and, ultimately, the objectives of the minimum lot subdivision size control itself which seeks to create, amongst other things, lots of a sufficient size to accommodate development.

For completeness, the subject lot, if left un-subdivided, will never be of a sufficient size and shape to accommodate development. Accordingly, it would be antipathetic to the minimum subdivision lot size objective to leave it as it is.

For the above reasons, Council respectfully requests that Council determine, pursuant to clause 4.6(4), that it as consent authority is satisfied in the terms set out in that subclause.

Should you have any further questions, please do not hesitate to contact Josh Haberfield of Council.

Attachment 5 – Recommended Conditions

Approved Plans and Specifications

- 1 The development shall be implemented substantially in accordance with the details and specifications set out on Plan of Subdivision of Lot 1 DP 1132396 Surveyor's ref: 11029 dated 17 November 2015 prepared by Dennis Smith Surveys and any details on the application form, and with any supporting information received, except as amended by the conditions specified and imposed hereunder.

Prior to the Issue of the Subdivision Certificate

- 2 **Existing Easements**

All existing easements must be acknowledged on the final subdivision plan.

- 3 **Existing Restriction as to Use**

All existing restriction on the use of land must be acknowledged on the final subdivision plan.

- 4 **Encroaching Pipes**

A minimum one (1) metre wide easement to drain water shall be created over any encroaching drainage pipes.

For all drainage easements proposed over the subject lots, a works as executed/survey plan of all stormwater drainage within the site is to be submitted with the Subdivision Certificate Application to confirm this.

- 5 **Encroaching Services**

A minimum one (1) metre wide easement for services must be created over any encroaching utility service.

- 6 **Section 88B Instrument**

The submission of a Final Section 88B Instrument to Council/Principal Certifier, which incorporates (but is not necessarily limited to) the following restrictions, easements and covenants, where applicable:

Easement for services;

- a Easement for services;
- b easement for drainage;
- c drainage easement over overflow paths;
- d rights of access;

- 7 **88B Instrument Easements/Restrictions**

Any easements or restrictions required by this consent must nominate Wollongong City Council as the authority to vary, modify or release/extinguish the easements or restrictions. The form of the easement(s) or restriction(s) created as a result of this consent must be in accordance with the standard format for easements and restrictions as accepted by the Land and Property Information Office.

- 8 **Final Documentation Required Prior to Issue of Subdivision Certificate**

The submission of the following information/documentation to the Principal Certifier, prior to the issue of a Subdivision Certificate:

- a Completed Subdivision Certificate application form and fees in accordance with Council's fees and charges;
- b Final plan of Subdivision prepared by a registered surveyor plus four (4) equivalent size paper copies of the plan;
- c Section 88B Instrument (where applicable) covering all necessary easements and restrictions on the use of any lot within the subdivision;
- d Original Subdivider/Developer Compliance Certificate pursuant to Section 73 of the Water Board (Corporatisation) Act 1994 from Sydney Water.