

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2025/1255
----------------------------	-------------

Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 449 DP 218045, 2 Emmett Place KILLARNEY HEIGHTS NSW 2087
Proposed Development:	Change of use from secondary dwelling to dual occupancy (detached)
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes, under Clause 166 of the <i>State Environmental Planning Policy (Housing) 2021</i>
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Scott Monk

Application Lodged:	05/09/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	17/09/2025 to 01/10/2025
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 0.00
---------------------------------	---------

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for change of use to a dual occupancy (detached) and strata subdivision of the existing lot into two strata lots, configured as follows:

Proposed Strata Lot 1:

- Existing vehicular access from Emmett Place
- Contains an existing two-storey detached dwelling house

Proposed Strata Lot 2:

- Existing vehicular access from Emmett Place
- Contains an existing single-storey secondary dwelling

No physical works are proposed to facilitate the proposed development.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Part 1 Preliminary
Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
Warringah Development Control Plan - C1 Subdivision

SITE DESCRIPTION

Property Description:	Lot 449 DP 218045 , 2 Emmett Place KILLARNEY HEIGHTS NSW 2087
------------------------------	--

Detailed Site Description:

The subject site consists of one allotment located on the eastern side of the cul-de-sac head of Emmett Place, Killarney Heights.

The site is irregular in shape with an arced frontage of 14.925 metres along Emmett Place and a maximum depth of 62.28 metres. The site has a surveyed area of 1,100.9m².

The site is located within the R2 Low Density Residential zone and accommodates a two-storey detached dwelling house to the rear (east) and a single-storey detached secondary dwelling to the front (east), with vehicular access via the existing eastern driveway to Emmett Place.

The site is relatively level and contains some landscaping in the front and rear yards.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by low-density residential uses, including detached dwelling houses (some with secondary dwellings), and semi-detached dwellings.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- Complying Development Certificate CDC2022/1011 for construction of a secondary dwelling, attached single garage and storeroom was approved by a private certifier on 29 September 2022.
- Complying Development Certificate CDC2022/1243 for modification to the above CDC was approved by a private certifier on 28 November 2022.

The secondary dwelling approved above has been constructed in full, with an occupation certificate issued on 21 December 2023.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions have been received in relation to this application.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 17/09/2025 to 01/10/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.
Traffic Engineer	The proposal has been reviewed and this is a basic subdivision of an existing dual occ (secondary dwelling) into a 2 lot subdivision. There is no proposed physical work as apart of the application. It is noted that the assessment has been undertaken on the existing Warringah DCP requirements. The only concern raised relates to the driveway crossover that is misaligned if supporting two separate properties. Condition provided for replacement of the driveway crossover to be replaced. Supported subject to conditions.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

Housing and Productivity Contribution

The *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2024* provides that the Housing and Productivity Contribution does not apply to strata subdivision.

SEPP (Housing) 2021

Chapter 6 - Part 2 - Dual occupancies and semi-detached dwellings on R2 zoned land

Clause 166 of the SEPP provides that development for the purposes of dual occupancies and semi-detached dwellings is permitted with development consent in Zone R2 Low Density Residential, on land to which this part applies.

Comment:

The proposed development is for the purpose of a dual occupancy in the R2 Low Density Residential Zone of the WLEP 2011. As such, clause 166 above applies.

It is noted that this land use is prohibited within the R2 zone per the Land Use Table of the WLEP 2011. Clause 8(1) of the SEPP provides that, if there is an inconsistency between the SEPP and another environmental planning instrument (such as the WLEP 2011 in this case), the SEPP prevails.

As such, the development is permissible via clause 166 of the SEPP. An assessment of the proposed development against the Aims of the WLEP 2011 and the objectives of the R2 Low Density Residential zone is provided in the relevant sections of this report.

SEPP (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment. However, as no physical works are proposed, no assessment of the provisions of this SEPP is required.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	Min. 600m ²	Lot 1: 791.2m ²	NA*	NA
		Lot 2: 309.7m ²		

* Pursuant to Clause 4.1 Minimum Subdivision Lot Size, Subclause (4)(a), minimum subdivision lot size does not apply in relation to the subdivision of any land by the registration of a strata plan or strata plan of subdivision under the *Strata Schemes Development Act 2015*.

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
2.6 Subdivision - consent requirements	Yes

Detailed Assessment

Part 1 Preliminary

1.2 Aims

With respect to the proposed dual occupancy land use (being prohibited by the LEP and made permissible by the Housing SEPP), the proposed development is consistent with the Aims of the WLEP 2011 as follows:

- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*

Comment:

Not applicable. The proposed development retains the residential use of the site.

- (a) *to create a land use framework for controlling development in Warringah that allows detailed provisions to be made in any development control plan made by the Council,*

Comment:

The proposed dual occupancy use is prohibited within the R2 Low Density Residential zone, so is not within the existing land use framework applying to the site under the WLEP 2011. However, the development is made permissible via Clause 166 of the State Environmental Planning Policy (Housing) 2021, as detailed in the relevant section of this report.

There are no physical works proposed under this application, so the existing built form is retained.

- (b) *to recognise the role of Dee Why and Brookvale as the major centres and employment areas for the sub-region,*

Comment:

Not applicable. The subject site is not located in Dee Why or Brookvale.

- (c) *to maintain and enhance the existing amenity and quality of life of the local community by providing for a balance of development that caters for the housing, employment, entertainment, cultural, welfare and recreational needs of residents and visitors,*

Comment:

The proposed development maintains and enhances the existing amenity and quality of life in the locality in that no physical works are proposed.

- (d) *in relation to residential development, to—*
(i) protect and enhance the residential use and amenity of existing residential environments, and
(ii) promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and
(iii) increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah,

Comment:

The proposed development does not include physical works, so remains designed and sited to protect and maintain the amenity of adjoining properties and their occupants, remains of appropriate bulk and scale in consideration of the applicable planning controls and the surrounding built form character, and provides housing stock to support the needs of the community.

- (e) *in relation to non-residential development, to—*
(i) ensure that non-residential development does not have an adverse effect on the amenity of residential properties and public places, and
(ii) maintain a diversity of employment, services, cultural and recreational facilities,

Comment:

Not applicable. The proposed development retains the residential use of the site.

- (f) *in relation to environmental quality, to—*
- (i) achieve development outcomes of quality urban design, and*
 - (ii) encourage development that demonstrates efficient and sustainable use of energy and resources, and*
 - (iii) achieve land use relationships that promote the efficient use of infrastructure, and*
 - (iv) ensure that development does not have an adverse effect on streetscapes and vistas, public places, areas visible from navigable waters or the natural environment, and*
 - (v) protect, conserve and manage biodiversity and the natural environment, and*
 - (vi) manage environmental constraints to development including acid sulfate soils, land slip risk, flood and tidal inundation, coastal erosion and biodiversity,*

Comment:

The proposed development is for strata subdivision and change of use only, and does not impact upon the environmental characteristics of the site.

- (g) *in relation to environmental heritage, to recognise, protect and conserve items and areas of natural, indigenous and built heritage that contribute to the environmental and cultural heritage of Warringah,*

Comment:

Not applicable. The subject site and surrounding area are not heritage-listed, within a heritage conservation area, or of indigenous heritage significance.

- (h) *in relation to community well-being, to—*
- (i) ensure good management of public assets and promote opportunities for social, cultural and community activities, and*
 - (ii) ensure that the social and economic effects of development are appropriate.*

Comment:

Not applicable. The proposed development is wholly on private land.

Zone R2 Low Density Residential

With respect to the proposed dual occupancy land use (being prohibited by the LEP and made permissible by the Housing SEPP), the objectives of the zone are addressed as follows:

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

Comment:

The subject site is currently developed with a two-storey detached principal dwelling and a single-storey detached secondary dwelling. The proposed development, being for change of use to a dual occupancy (detached) and strata subdivision, retains the available housing stock on the site to support the needs of the community.

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

Comment:

Not applicable. The proposed development retains the residential use of the site.

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

Comment:

The proposed development retains the existing built form and landscaped open space. The proposed development remains consistent with the landscape character of the Killarney Heights locality and is demonstrably in harmony with the natural environment of the area.

Warringah Development Control Plan

Built Form Controls

There are no physical works proposed under this development application. As such, there are no built form controls under the WDCP 2011 to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C1 Subdivision	Yes	Yes

Detailed Assessment

C1 Subdivision

For the purposes of this clause 'subdivision' does not include a strata plan of subdivision. As such, there are no controls under this clause to consider as part of this assessment.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

S7.12 levies are not applicable to this application as they were subject to the original development application relating to the whole site.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;

- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2025/1255 for Change of use from secondary dwelling to dual occupancy (detached) on land at Lot 449 DP 218045, 2 Emmett Place, KILLARNEY HEIGHTS, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
Sheet 1 of 2 Sheets	-	Plan of Draft Strata Subdivision of Lot 449 in DP 218045	Ramsay Surveyors	21 August 2025

Sheet 2 of 2 Sheets	-	Plan of Draft Strata Subdivision of Lot 449 in DP 218045	Ramsay Surveyors	21 August 2025
25044	1	Parking and Bin Storage Arrangement Plan	Michal Korecky	31 August 2025

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dual occupancy (detached), in accordance with the Dictionary of the *Warringah Local Environmental Plan 2011*, as follows:

Dual occupancy (detached) means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

3. **Compliance with Relevant Legislation**

Prior to the issue of the Strata Plan of Subdivision (including any Stratum), all relevant matters pertaining to this Plan, are to be satisfied to the satisfaction of Council or Certifying Authority, and evidence provided that the Plan complies with Part 4 of the Strata Schemes Development Act 2015.

Reason: To ensure compliance with the Consent issued, compliance with relevant legislation, and to ensure adequate provision is made, where required for access and appropriate facilities in the premises for building occupants.

4. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

5. **Access Driveway Across Road Reserve**

The applicant is required to reconstruct the driveway crossover between the existing layback (kerb) and the property boundary to allow a usable width at the boundary of 4.8 metres to permit safe access to both lots. The applicant is to submit an application under Section 138 of the Roads Act to Council for approval.

Reason: Provide safe access to the subject properties created in the subdivision.

6. **Traffic Management**

Traffic management procedures and systems must be in place and practised during the course of the project to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council's Development Control Plans.

Note: A plan of traffic management is to be submitted to and approved by the Principal Certifier.

Reason: To ensure pedestrian safety and continued efficient network operation.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Claire Ryan, Principal Planner

The application is determined on 14/11/2025, under the delegated authority of:



Steven Findlay, Manager Development Assessments