

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0606
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<b>Responsible Officer:</b>	Thomas Burns
<b>Land to be developed (Address):</b>	Lot 212 DP 1053924, 391 Pittwater Road NORTH MANLY NSW 2100
<b>Proposed Development:</b>	Change of use to a dwelling house and secondary dwelling
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Ashton Investments Pty Ltd
<b>Applicant:</b>	Ashton Investments Pty Ltd DM Planning

<b>Application Lodged:</b>	10/06/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New second occupancy
<b>Notified:</b>	18/06/2020 to 02/07/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 0.00
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### PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for a change of use from health consulting rooms to a dwelling house and secondary dwelling. No changes are proposed to the existing building footprint. The ground floor will comprise the principal dwelling, whilst the first floor will accommodate the secondary dwelling.

No works will be undertaken on the first floor. Works to the ground floor (principal dwelling) comprise internal alterations to provide a bathroom and kitchen. External works comprise new external steps and the removal of existing impervious parking areas to provide soft landscaping.

### 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 - Zone R2 Low Density Residential

Warringah Local Environmental Plan 2011 - 5.4 Controls relating to miscellaneous permissible uses

Warringah Local Environmental Plan 2011 - 6.3 Flood planning

Warringah Local Environmental Plan 2011 - 6.10 Development for the purposes of secondary dwellings in Zones R2 and R3

Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - C8 Demolition and Construction

Warringah Development Control Plan - C9 Waste Management

Warringah Development Control Plan - D6 Access to Sunlight

Warringah Development Control Plan - D9 Building Bulk

Warringah Development Control Plan - D10 Building Colours and Materials

Warringah Development Control Plan - D11 Roofs

Warringah Development Control Plan - E10 Landslip Risk

Warringah Development Control Plan - E11 Flood Prone Land

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 212 DP 1053924 , 391 Pittwater Road NORTH MANLY NSW 2100
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the south-western side of Pittwater Road, North Manly. The site is irregular in shape with six boundaries and has a surveyed area of 520.7sqm.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to the WLEP 2011 and accommodates a two storey masonry structure, which comprises health consulting rooms on the ground floor and a dwelling house on the first floor. Access to the dwelling house is provided via external</p>

stairs at the rear of the structure.

The site is virtually flat and accommodates landscaped areas around the perimeter of the site. The site is not bushfire prone, however is located within a flood affected area.

The site is located within 'Area A' on the Landslip Risk Map under the provisions of the WLEP 2011. The site is mapped within the 'Coastal Environment Area' under the provisions of the SEPP (Coastal Management) 2018.

The site does not contain a heritage item and is not located within a heritage conservation area.

#### **Detailed Description of Adjoining and Surrounding Development**

Adjoining and surrounding development comprises a mix of residential and commercial development, with residential uses being on the south-western side of Pittwater Road and numerous commercial developments being located on the north-eastern side of the road (opposite the site). The area is serviced by frequent bus routes.

Map:



#### **SITE HISTORY**

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

- Development Application 2003/1621DA for the erection of a two storey building containing a dwelling and a health consulting room approved by Council on 12 July 2004.
- Development Application DA2019/1097 for use of premises as a dwelling instead of health

- consulting rooms rejected by Council on 10 October 2019.
- Review of Rejection REV2019/0064 for use of premises as a dwelling instead of health consulting rooms withdrawn by the applicant.

### Site Visits

A site visit was undertaken at the subject site on 21 August 2020.

### Application History

During the site visit the Assessment Officer identified that internal works to the kitchen had been undertaken. It is noted that the configuration of the room had not been altered. Clause 2.51 of the SEPP (Exempt and Complying Development Codes) 2008 stipulates that minor building alterations may occur as exempt development (without consent), provided they are not constructed or installed on or in a heritage or draft heritage item and comprise one of the following:

- (a) a doorway, wall, ceiling or floor lining, or
- (b) a deteriorated frame member, including stairs and stairwells, or
- (c) a bathroom or kitchen, or
- (d) a built in fixture such as a vanity, a cupboard or a wardrobe, or
- (e) an existing sanitary fixture, such as a grease trap or the like, or
- (f) shelving or racking that is not higher than 2.7m, or
- (g) a work station or counter.

The installation of the kitchen fall under the exempt development provisions and therefore, the application may proceed to be assessed and determined via way of a Development Application.

Moreover, the Assessment Officer also identified that the occupant of the dwelling had a home hair salon, which falls under the home occupation definition within the WLEP 2011. The home occupation does not involve the employment of persons other than the occupant of the dwelling and is not a detriment to the neighbourhood by reason of noise emission or traffic generation. The home occupation is permissible without Council consent within the R2 Low Density Residential zone.

### Amended Plans

Council's preliminary assessment identified that the proposed development was deficient in landscaped open space, with only 31.88% (166sqm) of the site area being landscaped open space. The applicant had included permeable car parking spaces as landscaped open space. Council does not include permeable paving as part of landscaped open space due to the compaction required to support the parking of a vehicle.

Noting that the application involved a change of use from a commercial to residential use, it is integral that compliant landscaped open space is provided on the site to ensure appropriate internal amenity for the occupants of the site, the adequate facilitation of water infiltration and to allow for the establishment of further planting.

Subsequent to the preliminary assessment, Council wrote to the applicant requesting that impervious parking areas within the rear yard be removed to provide compliant dimensions of landscaped open space, whilst still retaining at least two parking spaces and adjacent impervious areas to allow for sufficient vehicular movement for reversing.

On 18 September 2020 the applicant submitted revised plans demonstrating compliant dimensions of



landscaped open space. The amended plans have been considered for the final assessment, with the report discussing the merits of the amended proposal.

The amended plans are considered to have a reduced environmental impact in comparison to the original proposal. Therefore the application was not re-notified for an additional 14 days, in accordance with the Northern Beaches Community Participation Plan.

## 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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 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.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Council requested that the applicant submit amended plans.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent</p>

Section 4.15 Matters for Consideration'	Comments
	<p>authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
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	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
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 were received.
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 development application has been publicly exhibited from 18/06/2020 to 02/07/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control 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	<p>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.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Acid Sulphate)	<p><b>General Comments</b></p> <p>Environmental Health have been asked to consider this proposal in regard to the potential disturbance of acid sulfate soils. The subject site is classified as Acid Sulfate Soils Class 4 in accordance with the provisions of the Warringah Local Environmental Plan 2011. Acid Sulfate Soils Class 4 indicates that Acid sulfate soils are likely to be found beyond 2 metres below the natural ground surface. This proposal is for the change of use from a dwelling and health consulting room to a dwelling and secondary dwelling, with some minor internal works. The plans provided with the proposal also indicate "external stairs" are to be constructed, though no further detail in regard to this is provided at this stage. Given the size of the intended stairs indicated on the plans, it is unlikely that they will be required to be piered or otherwise supported below ground to a level that is likely to disturb acid sulfate soils. Accordingly, the proposal is supported.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
NECC (Development Engineering)	<p>The proposed change of use includes some minor alterations to the building. The existing stormwater system, vehicular access and parking are to remain which is satisfactory.</p> <p>No objection to approval, subject to conditions as recommended.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed development is a change of use from a health consulting room to a dwelling and minor internal alterations. Subject to conditions, the proposal is compliant with Council's flood prone land development controls.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and

LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

### **SEPP 55 - Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential and commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the proposed residential use, being a dwelling house and secondary dwelling.

### **SEPP (Affordable Rental Housing) 2009**

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

## **Division 2: Secondary dwellings**

### Clause 19: Definition

Development for the purposes of a secondary dwelling includes the following:

- (a) the erection of, or alterations or additions to, a secondary dwelling,
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

**Note:** The standard instrument defines secondary dwelling as follows:

***"secondary dwelling means a self-contained dwelling that:***

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling."*

### Comment:

The proposed use is defined under WLEP 2011 as a secondary dwelling. The definition is the same as the Standard Instrument LEP definition.

### Clause 20: Land to which this Division applies:

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Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but <i>only if</i> development for the purposes of a dwelling house is permissible on the land:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential.	<b>Consistent.</b> The site is located within the R2 Low Density Residential zone and, as such, the proposed use is permissible with consent under WLEP 2011.

#### Clause 21: Development to which this Division applies

Requirement	Comment
This Division applies to development, on land to which this Division applies, for the purposes of a secondary dwelling.	<b>Consistent.</b> The development involves a change of use to provide a secondary dwelling, as defined by the Standard Instrument. Therefore, this Division applies.

#### Clause 22: Development may be carried out with consent

Development to which this Division applies may be carried out with consent.

Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The change of use will result in one principal dwelling and one secondary dwelling on the site. The proposed secondary dwelling is attached to the principal dwelling and located within the existing building footprint.
(3) A consent authority must not consent to development to which this Division applies unless:  (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and  (b) the total floor area of the secondary dwelling is no more than 60m <sup>2</sup> or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	The site is not subject to a Floor Space Ratio Development Standard.  Despite the 60sqm gross floor area requirement entailed within this SEPP, Clause 6.10 of the WLEP 2011 allows secondary dwellings within the R2 or R3 zone to contain a gross floor area up to 75sqm, provided the secondary dwelling is located entirely within an existing principal dwelling and contains no other secondary dwelling. The proposed secondary dwelling will be located entirely within the footprint of the existing dwelling on the first floor and as such, the 75sqm control can be applied to the proposal. The proposed secondary dwelling as a gross floor area of 72.4sqm, thereby compliant with Clause 6.10 of the WLEP 2011 and subclause (3) (b) of this SEPP.
(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:	The application is not being refused on any of the grounds specified within subclause (4).

(a) site area if:	
(i) the secondary dwelling is located within, or is attached to, the principal dwelling, or	
(ii) the site area is at least 450 square metres.	
(b) parking if no additional parking is to be provided on the site.	

**Note:** A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).

#### Clause 24: No subdivision

Requirement	Comment
A consent authority must not consent to a development application that would result in any subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out under this Division.	<b>Consistent.</b> This application does not propose any subdivision of the existing allotment.

#### Conclusion

The proposed secondary dwelling demonstrates compliance with the requirements of the SEPP ARH and is worthy of Council support.

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX Certificate has been submitted with the application (see Certificate No. A378221 dated 25 May 2020). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

#### **SEPP (Coastal Management) 2018**

The site is identified within the 'Coastal Environment Area' pursuant to the SEPP (Coastal Management) 2018. Accordingly, the proposal is considered against Clauses 13 and 15 of the SEPP as follows:

##### **13 Development on land within the coastal environment area**

*(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—*

*(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*

*(b) coastal environmental values and natural coastal processes,*

*(c) the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*

*(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*

*(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

*(f) Aboriginal cultural heritage, practices and places,*

*(g) the use of the surf zone.*

*(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*

*(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*

*(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*

*(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

*(3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).*

Comment:

The proposal at large involves a change of use, with the only physical works pertaining to internal alterations and external steps with a handrail. The development is well separated from environmentally sensitive lands and will not result in the removal of native vegetation, nor will the proposal hinder access to and along the foreshore. The change of use will not have an adverse impact upon Aboriginal heritage, nor will it impact the use of the surf zone. Therefore, it is concluded that the proposal is designed, sited and will be managed to avoid an adverse impact upon the matters referred to in subclause (1).

**15 Development in coastal zone generally—development not to increase risk of coastal hazards**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

Comment:

Having regard to the nature of the proposed use/works and adequate separation from environmentally sensitive lands, it is concluded that the proposal is unlikely to cause increased risk of coastal hazards within the locality.

Concluding Remarks

Based on the above assessment, it is concluded that the proposal demonstrates consistency with the relevant matters prescribed within the SEPP (Coastal Management) 2018.

Is the development permissible?	Yes
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
Height of Buildings:	8.5m	1.69m (handrail on external steps)	-	Yes

Note: No changes are proposed to the footprint and envelope of the existing structure.

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	N/A
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes
6.10 Development for the purposes of secondary dwellings in Zones R2 and R3	Yes

#### Detailed Assessment

##### **Zone R2 Low Density Residential**

The applicant seeks development consent for a change of use from health consulting rooms to a dwelling house and secondary dwelling. Dwelling houses and secondary dwellings are permitted with consent in the R2 Low Density Residential zone.

The proposal is considered against the zone objectives below:

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

#### Comment:

The proposed dwelling house and secondary dwelling will provide for the housing needs of the community within a low density residential environment, including the provision of more compact and affordable housing with minimal environmental impacts.

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

#### Comment:

The proposal will provide a residential land use.

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

Comment:

The proposal will retain various landscape treatments, which provides a visual buffer around the site and softens the impact of the existing two storey structure. The proposal will also provide additional landscaped open space in the rear yard, which will ensure appropriate internal amenity for the occupants of the site, facilitate water infiltration and allow for the establishment of further planting.

Concluding Remarks

Based on the above assessment, it is concluded that the proposed residential use demonstrates consistency with the zone objectives.

**5.4 Controls relating to miscellaneous permissible uses**

This assessment relies on Clause 6.10 of the WLEP 2011 for gross floor area requirements pertaining to secondary dwellings.

**6.3 Flood planning**

Council's Floodplain Officer has included suitable conditions to ensure consistency with the WLEP 2011 and WDCP 2011 aims and requirements for flood management.

**6.10 Development for the purposes of secondary dwellings in Zones R2 and R3**

The proposed secondary dwelling will be located entirely within the footprint of the existing dwelling on the first floor and as such, the 75sqm control can be applied to the proposal. The proposed secondary dwelling as a gross floor area of 72.4sqm, thereby compliant with Clause 6.10 of the WLEP 2011.

**Warringah Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	No new walls	N/A	N/A
B3 Side Boundary Envelope	4m then projected at 45 degrees	within envelope (south-east) - as existing	-	Yes
	4m then projected at 45 degrees	within envelope (north-west) - as existing	-	Yes
B5 Side Boundary Setbacks	0.9m	0.9m (south-east) - as existing	-	Yes
	0.9m	5.5m (north-west) - as existing	-	Yes
B7 Front Boundary Setbacks	6.5m	4.95m - as existing	23.85%	<b>No</b>
B9 Rear Boundary Setbacks	6m	12.4m (external steps)	-	Yes



D1 Landscaped Open Space (LOS) and Bushland Setting	40%	41.81% (217.7sqm)	-	Yes
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**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	No	Yes
C9 Waste Management	No	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

#### Detailed Assessment

##### **B7 Front Boundary Setbacks**

The existing structure does not comply with this control, being setback 4.95m from the front boundary.

Despite this, the proposal at large involves a change of use, with all physical works being internal or at the rear of the existing structure (external steps, handrail and removal of impervious parking spaces to provide landscaped open space). The site frontage is appropriately landscaped and includes a number of trees to provide a visual buffer between the development and public domain.

Under these circumstances, the existing non-compliance is supported.

### **C8 Demolition and Construction**

The proposal involves minor construction works and a Waste Management Plan has not been submitted with this application. To ensure the proper disposal of builders' waste, a suitable condition has been included with this consent requiring a Waste Management Plan to be prepared for the development.

### **C9 Waste Management**

A suitable condition has been included with this consent to ensure compliance with this control.

### **D6 Access to Sunlight**

Noting that the building envelope will remain unaltered, the proposal will not result in increased overshadowing impacts.

### **D9 Building Bulk**

No changes are proposed to the building envelope.

### **D10 Building Colours and Materials**

The external finishes will remain as existing.

### **D11 Roofs**

There are no changes to the roof form.

### **E10 Landslip Risk**

The site is located within 'Area A' on the Landslip Risk Map under the provisions of the WLEP 2011. Clause E10 of the WDCP 2011 stipulates that Council may decide whether a preliminary assessment of geotechnical site conditions is required for development within this area. This assessment concludes that a geotechnical assessment is not necessary, noting that:

- The development at large involves a change of use, with physical works pertaining to internal alterations, external steps and soft landscaping.
- The site is virtually flat with no evidence of potential landslip risk.
- The development will not increase stormwater discharge on the site or adjoining properties.
- The development will not disrupt existing subsurface flow conditions.

### **E11 Flood Prone Land**

Council's Floodplain Officer has included suitable conditions to ensure consistency with the WLEP 2011

and WDCP 2011 aims and requirements for flood management.

## **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 2019**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

## **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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 DA2020/0606 for Change of use to a dwelling house and secondary dwelling on land at Lot 212 DP 1053924, 391 Pittwater Road, NORTH MANLY, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

#### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
072015_001 Revision A - Site Plan	17 September 2020	Jaclyn Smith Architectural Designs
072015_101 Revision A - Existing First Floor Plan	12 May 2020	Jaclyn Smith Architectural Designs
072015_102 Revision A - Proposed Ground Floor Plan	17 September 2020	Jaclyn Smith Architectural Designs
072015_200 Revision A - Elevations 1	12 May 2020	Jaclyn Smith Architectural Designs
072015_201 Revision A - Elevations 2	12 May 2020	Jaclyn Smith Architectural Designs
072015_300 Revision A - Sections	12 May 2020	Jaclyn Smith Architectural Designs

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate No. A378221	25 May 2020	Rosemary Ashton
BCA Report No. W130/Rev 2	25 May 2020	GRS Building Reports

#### b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

### 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 dwelling house and secondary dwelling.

The Warringah Local Environmental Plan 2011 defines the aforementioned uses as follows:

- **dwelling house** means a building containing only one dwelling.
- **secondary dwelling** means a self-contained dwelling that—
  - (a) is established in conjunction with another dwelling (the principal dwelling), and
  - (b) is on the same lot of land as the principal dwelling, and
  - (c) is located within, or is attached to, or is separate from, the principal 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.

### 3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the



development consent must, at the person's own expense:

- (i) protect and support the adjoining premises from possible damage from the excavation, and
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

#### 4. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is

required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming

pools

- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

## CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

### 5. **Building Code of Australia Report**

The recommendations as detailed and recommended in the Building Code of Australia Assessment Report prepared by GRS Building Reports, dated 25 May 2020, Report Ref No.W130/Rev 2 are to be carried out in full to the building.

Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

### 6. **Flooding**

In order to protect property and occupants from flood risk the following is required:

#### Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 3.66m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed cut electricity supply during flood events.

#### Floor Levels – F2

The underfloor area and perimeter of the dwelling below the 1% AEP flood level of 3.16m AHD is to be designed and constructed to remain open and allow clear passage of floodwaters.

#### Fencing – H1

New fencing (including gates, boundary fencing and accessway balustrades) shall be open for passage of flood waters - All new fencing on the property must be design with a minimum of 50% open area between the 1% flood level of 3.16m AHD and natural

ground level, to allow flood waters to pass through.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

**Reason:** To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

**7. Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

**Reason:** To ensure the development is constructed in accordance with appropriate standards.

**8. Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Northern Beaches Council's Guidelines for Waste Management.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

**Reason:** To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

## **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**9. Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

**Reason:** Public safety.

**10. Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Certifying Authority.

**Reason:** To ensure demolition and construction waste is recycled or reused and to limit landfill.

**11. Acid Sulfate Soils Management Plan**

Any works that require disturbance of natural soils beyond 2 metres below natural ground level shall require an Acid Sulfate Soils Management Plan to be provided to Council's Environmental Health Team and the Principal Certifying Authority.

If such an Acid Soils Management Plan is found to be a requirement, compliance with this plan must be demonstrated to the Principal Certifying Authority before the issuing of an interim

occupation certificate or final occupation certificate

Reason: To protect human health and the environment.

## CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

### 12. Fire Safety Matters

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

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

**Signed**



**Thomas Burns, Planner**

The application is determined on 18/09/2020, under the delegated authority of:



**Tony Collier, Acting Development Assessment Manager**