

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1648
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Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot 6 DP 240752, 7 Elm Avenue BELROSE NSW 2085
Proposed Development:	Use of part of a dwelling house as a secondary dwelling
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Catherine Anne Rigney-Hain

Application Lodged:	09/12/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	18/12/2024 to 23/01/2025
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 45,100.00
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PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for the use of an existing garage to be converted into a secondary dwelling.

The conversion works have already taken place without consent. Therefore, a deferred commencement condition of consent is recommended for a Building Information Certificate to be issued for the existing unauthorised works, prior to activation of this development consent.

The unauthorised works relate to internal fit-out works and generally do not alter the existing built form of the dwelling.

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

SITE DESCRIPTION

Property Description:	Lot 6 DP 240752 , 7 Elm Avenue BELROSE NSW 2085
Detailed Site Description:	<p>The subject site known as 7 Elm Avenue is a relatively level block with a single access driveway via Elm Avenue.</p> <p>The site is zoned R2 Low Density Residential.</p> <p>The current dwelling is centrally located on the site with a single-entry driveway leading to a tandem two car garage. The site has minimal slope from the south-eastern corner of the site down to the north-western corner of the block by 1.92m.</p> <p>The side boundary facing north is 33.84m while the south boundary is 32.545m. The rear boundary facing west is 20.42m while the boundary to the east being the front boundary faces onto Elm Avenue has two portions - one of 15.505m and one of 6.95m.</p> <p>The adjoining property to the north is a single-storey residence that sits slightly below the subject property. To the south of the property is a vacant lot and to the west is No.3 Calool Crescent which is a single storey residence.</p>

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:

Application **DA2008/1332** for Alterations and additions to an existing dwelling (Approved 23/10/2008)

Application **DA2008/0524** for Alterations and additions to an existing dwelling including a new deck and carport (Approved 30/06/2008)

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
<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)</p>	<p><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.</p> <p><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.</p> <p><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.</p> <p><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.</p> <p><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.</p> <p><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 matter has been addressed via a condition of consent.</p> <p><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.</p>
<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>	<p>(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.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in</p>	<p>See discussion on "Notification & Submissions Received" in this report.</p>

Section 4.15 Matters for Consideration	Comments
accordance with the EPA Act or EPA Regs	
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 18/12/2024 to 23/01/2025 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Brian Leslie Trevarton	9 Elm Avenue BELROSE NSW 2085

One submission was received during the community notification period and the following concerns were raised:

- **Noise**

Comment

Concern was raised in regards to noise impacts resulting from the existing secondary dwelling. It is noted the existing northern wall is on a side setback of 0.815m to the boundary of No.9 Elm Street which despite being slightly non-compliant with the 0.9m control, does not alter the existing built form of the existing building. The minor existing non-compliance is not considered to unreasonably exacerbate any noise or amenity impacts. With the existing dwelling at No.9 located on a minimum side setback of 3m, this is considered to be a reasonable and typical spatial arrangement in a low density residential locality.

However, given window (W1) adjoins a highly habitable kitchen and is in proximity to the northern side boundary and private open space of No.9 Elm Street, a suitable condition of consent has been recommended for this window to be fixed and not able to be opened.

Furthermore, as per the deferred commencement conditions of this consent, a Building Information Certificate (BIC) for the existing physical works is required to be issued prior to activation of this Development Consent. Any inconsistencies or non-compliances of the existing development with the BCA in relation to noise standards shall be determined and rectified at this stage. Following this, any complaints relating to unreasonable noise levels emitting from the property or at an unreasonable hour

of the day/night, should be referred to the NSW Police.

- **Privacy**

Comment

Concern was raised in regards to visual privacy impacts resulting from the northern elevation windows. It is noted that these windows have been constructed without development consent and shall be subject to the BIC, however they are considered to be low-lying windows relating to a single storey structure and on an acceptable side setback. Therefore there is not considered to be any unreasonable visual privacy impacts resulting from the windows which can be reasonably screened by existing and future boundary fencing and vegetation.

- **Flood and Stormwater Management**

Comment

Concern was raised in regards to flooding and stormwater management. It is noted that the unauthorised works generally relate to internal fit-out works only which shall not impact the existing built form of the subject site or resultant stormwater impacts. Notwithstanding, the site is located within flood prone land and was referred to Council's Flood Engineer who has reviewed the application and raised no objection to approval.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage and or Building Information application stage for as built works.</i></p>
NECC (Bushland and Biodiversity)	<p>Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable provisions:</p> <ul style="list-style-type: none"> • Warringah DCP cl. E2 Prescribed Vegetation • Warringah DCP cl. E4 Wildlife Corridors • Warringah DCP cl. E6 Retaining Unique Environmental Features <p>The proposed works are located within the footprint of the existing dwelling and as such does not require the removal of any vegetation nor will it impact upon native wildlife habitat or unique environmental</p>

Internal Referral Body	Comments
	features. No objections to the proposed works, subject to conditions.
NECC (Flooding)	The proposal is for the conversion of an existing garage space into a secondary dwelling. The proposal is assessed against Section E11 of the Warringah DCP and Clause 5.21 of the Warringah LEP. The proposal is located within the extents of the draft Middle Harbour Flood Study and is assessed against that. The proposal is not subject to any flood related development controls. The proposal generally complies with Section E11 of the Warringah DCP and Clause 5.21 of the Warringah LEP.

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)

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No.1773492S dated 18 November 2024).

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	Compliance/Comment
(2) Development consent must not be granted for development to which this Part applies unless— (a) No dwellings, other than the principal dwelling	Complies

and the secondary dwelling, will be located on the land, and (b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and (c) The total floor area of the secondary dwelling is: (i) no more than 60m ² , or (ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area.	Complies Total floor area is 33m ² . Complies
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Clause 53 – Non-discretionary development standards—the Act, s 4.15	
Standard	Compliance/Comment
(a) For a detached secondary dwelling - a minimum site area of 450m ² .	Complies
(b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	Complies

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?	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

Compliance Assessment

Clause	Compliance with Requirements
5.4 Controls relating to miscellaneous permissible uses	Yes

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C3 Parking Facilities	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes

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

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 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 DA2024/1648 for Use of part of a dwelling house as a secondary dwelling on land at Lot 6 DP 240752, 7 Elm Avenue, BELROSE, 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.

DEFERRED COMMENCEMENT CONDITIONS

1. Building Information Certificate

Prior to activation of this development consent, a Building Information Certificate (BIC) shall be issued for the existing unauthorised physical works to the dwelling.

The BIC shall ensure kitchen window W1 is fixed and not openable.

Evidence required to satisfy these conditions must be submitted to Council (through the NSW Planning Portal) within two (2) years of the date of this consent, or the consent will lapse in accordance with the Environmental Planning and Assessment Regulation.

Applicants must submit a request for operational consent to Council via the NSW Planning Portal and upload all relevant documentation. This can be completed through accessing the relevant portal application ID and navigating to 'Request for Operational Consent' in the Actions dropdown menu.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

GENERAL CONDITIONS

2. 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
DA01	-	Site Plan	JAH	22 November 2024
DA02	-	Floor Plan	JAH	22 November 2024
DA03	-	Elevations	JAH	22 November 2024
DA04	-	Elevations	JAH	22 November 2024

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.

FEES / CHARGES / CONTRIBUTIONS

3. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

4. No Clearing of Vegetation

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

5. 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 Certifier prior to the issue of the Construction Certificate.

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

DURING BUILDING WORK

6. Wildlife Protection

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

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

Signed



Dean Pattalis, Planner

The application is determined on 07/02/2025, under the delegated authority of:



Steven Findlay, Manager Development Assessments