

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0292
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Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 50 DP 17125, 166 Pitt Road NORTH CURL CURL NSW 2099
Proposed Development:	Demolition works and construction of a garage and 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
Owner:	Campbell Robert Marks Lachlan James Marks
Applicant:	Marksey Pty Ltd

Application lodged:	28/03/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	03/07/2019 to 17/07/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 173,700.00
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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 Development Control Plan - A.5 Objectives

Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - C5 Erosion and Sedimentation

Warringah Development Control Plan - D8 Privacy

Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 50 DP 17125 , 166 Pitt Road NORTH CURL CURL NSW 2099
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Pitt Road.</p> <p>The site is irregular in shape with a primary frontage of 16.6m along Pitt Road and a secondary frontage of 41.15 along Delaigh Avenue. The site has a surveyed area of 653.1m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single storey residential dwelling with a single vehicle detached garage.</p> <p>The site is located on a minor slope of approximately 4.8% falling in the direction from the north-western corner boundary towards the Pitt Road street frontage.</p> <p>The site has minimal vegetation with no canopy trees located on the site. Located along the northern and eastern boundaries are small to medium hedges and small trees which provide a landscape screen to the existing timber paling fence. There are small hedges running along the length of the southern boundary, and for a distance of approximately 22 metres along the western boundary.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one (1) and two (2) storey residential dwellings.</p>

A site visit was conducted on 7 May 2019 with the owner of 166 Pitt Road and the owners of 1 Delaigh Avenue present. A second site visit was conducted on 24 July 2019 with a Principal Planner and no owners present.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

With regards to this application, a formal letter was sent to the applicant, Marksey Pty Ltd, on 17 June 2019 requesting the application be withdrawn based on the following reasons:

- The size of the structure exceeded the maximum floor area as outlined under *Clause 5.4(9)* of the *Warringah Local Environmental Plan*.
- The application was inconsistent with *Part D8 Privacy* and *Part D9 Building Bulk* under the *Warringah Development Control Plan*.

However, based on the length of time the application had been with Council at this point, additional information or amendments to the current application were accepted. The applicant advised the application would not be withdrawn and the following additional information was provided to Council on 25 June 2019:

- Statement of Environmental Effects
- BASIX Certificate
- Master set plans

Upon review of the additional information provided, Council is still of the opinion that the proposed development is excessive in its bulk and scale and inconsistent with the existing streetscape. An informal request was sent to the applicant via email on 6 August 2019 to withdraw the application, or

have Council determine the application as it currently stands. The applicant advised on 7 August 2019 that the application would not be withdrawn.

PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for the following:

- Demolition of existing garage structure.
- Construction of a double garage with storage facilities, laundry facilities and a toilet.
- Construction of a Secondary Dwelling located above the proposed double garage and storage.

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	None applicable.
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 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent, should the application be approved.</p> <p><u>Clause 50(1A)</u> of the EP&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&A Regulation 2000, additional information was provided and Council has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. These matters can be addressed via a condition of consent, should the</p>

Section 4.15 Matters for Consideration'	Comments
	<p>application be approved.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). These matters can be addressed via a condition of consent, should the application be approved.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. These matters can be addressed via a condition of consent, should the application be approved.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). These matters can be addressed via a condition of consent, should the application be approved.</p> <p><u>Clause 143A</u> of the EP&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) 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 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>
Section 4.15 (1) (c) – the suitability of the site for the development	The proposed development is unsuitable for the site.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the <i>Warringah Local Environmental Plan Clause 1.2 Aims of Plan</i> and <i>Warringah Development Control Plan Clauses A.5 Objectives, B7 Front Boundary Setbacks and D9 Building Bulk</i> and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be 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 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 process council is in receipt of 2 submission/s from:

Name:	Address:
Mr David Henry McKenzie Ellis	1 Delaigh Avenue NORTH CURL CURL NSW 2099
Orazio Enzo Pennisi	164 Pitt Road NORTH CURL CURL NSW 2099

The following issues were raised in the submissions and each have been addressed below:

- Building bulk
- Impact on existing streetscape of Delaigh Avenue
- Privacy

The matters raised within the submissions are addressed as follows:

- **Concerns were raised by the owners of 1 Delaigh Avenue with regards to the excess bulk of the proposed structure impacting upon the existing streetscape of Delaigh Avenue.**

Comment:

Original plans were submitted to Council seeking consent for a two (2) vehicle garage, storage, laundry facilities and toilet on the ground floor and a secondary dwelling on the first floor with a balcony. A letter requesting the withdrawal of this application was sent to the Applicant, however revised plans were provided to Council reflecting design amendments to the front facade in an attempt to visually reduce the bulk of the proposed structure. Council still holds concerns for the bulk and scale of the structure which is not consistent with the existing streetscape and character of development along Delaigh Avenue.

- **Concerns were raised by the owners of 1 Delaigh Avenue and 164 Pitt Road with regards to the proposed development impacting upon their privacy.**

Comment:

The original plans submitted to Council had a large balcony located off the internal living area along the northern elevation, thus impacting upon the privacy and amenity of the residents at 1 Delaigh Avenue, whose main private open space is located within the front setback. Amended plans were received by Council which show the balcony along the northern boundary to be

removed, and instead is located at the front of the dwelling overlooking Delaigh Avenue with a privacy screen located along the northern side of the balcony to minimise overlooking into 1 Delaigh Avenue.

Concerns were also raised in regards to the windows located along the northern elevation. The ground floor window sills for the garage range from heights of 1.8m to 2.4m. Additionally a 1.8m dividing fence is erected between 1 Delaigh Avenue and 166 Pitt Road therefore there will be no privacy impact for either property with regards to the ground floor windows on the northern elevation.

The owners of 164 Pitt Road have raised concerns about the privacy impact for their property with regards to the windows along the eastern elevation and the balcony area located along the northern elevation. The revised plans which show the balcony as relocated to the front of the dwelling remove the privacy concerns in relation to the balcony. However, concerns still remain with regards to the windows along the eastern elevation. These windows for the bedroom and kitchen have a sill height of 1m, while the bathroom window sill has a height of 1.5m. It is considered that the height of the window sills are unlikely to impact upon the privacy of the rear yard of 164 Pitt Road as the bedroom is not a high trafficable area, the kitchen windows are located at the sink and bench space which are used intermittently throughout the day, and the occupants of the subject site would aim to achieve privacy while using the bathroom facilities.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No comment.
NECC (Development Engineering)	No objections are raised to the proposed development, subject to conditions.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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 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 residential land use.

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 Secondary Dwelling is consistent with the definition of a Secondary Dwelling as it appears under WLEP 2011.

Clause 20: Land to which this Division applies:

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	Consistent. The site is located within the R2 Low Density

(c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential.	Residential zone and, as such, the proposed use is permissible with consent under WLEP 2011.
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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.	Consistent. The development involves the construction of 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 land currently has one (1) residential dwelling. The development of a Secondary Dwelling will result in two (2) residential dwellings on the site. Therefore, this Division applies, and is complied with.
(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 ² 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 proposed Secondary Dwelling is 54.8m ² , and is therefore compliant with the 60m ² maximum size requirement.
(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds: (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.	The proposed Secondary Dwelling is detached from the principal dwelling, the site area is greater than 450m ² (652m ²) and the site will provide sufficient parking for the residents of the principal dwelling, and Secondary Dwelling.

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.	Consistent. This application does not propose any subdivision of the existing allotment.

Conclusion

The proposed Secondary Dwelling is consistent with the relevant controls under SEPP (ARH) 2009, and is therefore acceptable in this regard.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1004110S on 21 March 2019).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	53

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
 - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
 - (c) *the carrying out of any of the following:*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
 - (d) *any other development.*

Comment:

This Clause is not applicable to the subject site.

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

This Clause is not applicable to the subject site.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*

- (b) *the proposed development:*
- (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures
are in
place
to
ensure
that
there
are
appropriate
responses
to, and
management
of,
anticipated
coastal
processes
and
current
and
future
coastal
hazards.*

Comment:

This Clause is not applicable to the subject site.

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.*

Comment:

This Clause has been assessed against the subject site and proposed development. No issues were raised in relation to the proposed development and the land being within the Coastal Environment Area.

- (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.

Comment:

This Clause has been assessed against the subject site and proposed development. No issues were raised in relation to the proposed development and the land being within the Coastal Environment Area.

14 Development on land within the coastal use area

- (1)
- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

This Clause is not applicable to the subject site.

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:

The proposed development will not result in the increased risk of coastal hazards.

As such, it is considered that the application does/does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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?	No
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.8m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	5.5m	N/A	Yes
B3 Side Boundary Envelope	5m (northern boundary)	Within	N/A	Yes
	5m (eastern boundary)	Within	N/A	Yes
B5 Side Boundary Setbacks	0.9m (northern)	4.3m - 5.2m	N/A	Yes
	0.9m (eastern)	2.8m	N/A	Yes
	0.9m	2.7m	N/A	Yes

B7 Front Boundary Setbacks	6.5m	3.6m	44.6%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	56.5%	N/A	Yes

***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	No	No
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	No
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	No	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	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	No	Yes
D9 Building Bulk	No	No
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
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

A.5 Objectives

The proposed development is considered to be inconsistent with the following underlying objectives of the Warringah Development Control Plan:

To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood

Comment:

The bulk and scale of the proposed development is considered to be excess and therefore inconsistent with the developments within the surrounding neighbourhood.

To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian access and creates an attractive design outcome.

Comment:

The proposed development will not result in a unified landscape, with minimal landscaping treatments being included in the proposal. Furthermore, the proposal will not positively contribute to the existing streetscape as the existing dwellings along Delaigh Avenue are of minimal impact to the characteristic of the streetscape.

It is considered that the proposed development cannot achieve all the underlying objectives of the Warringah Development Control Plan (WDGP).

B7 Front Boundary Setbacks

The subject site is a corner allotment located within the R2 Low Density Residential zone. Therefore the exception under this control may be applied subject to the consideration of the character of the secondary street and the predominant setbacks existing to that street. It is determined that the exception to this control (being a 3.5m front setback) cannot be applied as the proposed development will dominate the existing character of Delaigh Avenue. Existing dwellings along Delaigh Avenue are either single storey dwellings, or if there is a second storey, this storey is stepped back from the street – often presenting as a single storey when viewed from Delaigh Avenue. Upon a site visit it was noted that the predominant setback of the dwellings located on Delaigh Avenue are greater than the proposed 4.5m. A merit based assessment of the front boundary setback cannot be applied as the underlying objectives and requirements cannot be achieved. Amended plans were received by Council on 25 June 2019, and it is determined the proposed amendments remain inconsistent with this control. Therefore, Council cannot support this application.

C5 Erosion and Sedimentation

An erosion and sediment control fence has not been included on the plans. Should the application be recommended for approval, a condition of consent would be included to ensure a suitable erosion and sediment control fence would be installed for the duration of the construction stage.

D8 Privacy

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The proposed development includes the construction of a double car garage with associated storage, laundry facilities and a toilet on the ground floor and a secondary dwelling located on the first floor. The original plans submitted to Council had a large balcony off the main living areas of the secondary dwelling along the northern boundary. Revised plans were submitted to Council which reflected an amendment to this balcony in which it was relocated to the western boundary overlooking Delaigh Avenue and significantly reducing any visual and acoustic privacy impacts to 1 Delaigh Avenue. Additionally, a privacy screen with a height of 1.8m has been proposed along the northern side of the balcony for a distance of 3.9m to further minimise potential privacy impacts to 1 Delaigh Avenue. However, this privacy screen will partially enclose the balcony, thus further contributing to the bulk of the development forward of the building line. Furthermore, the windows located along the eastern boundary are within the 9m parameter requirement as outlined under this Control. While these windows will not result in direct or close views into the windows at 164 Pitt Road, they will, however, directly overlook into the main private open space of this property. Should this application be approved, a condition of consent would be recommended to ensure the kitchen windows along the eastern elevation have a minimum sill height of 1.5m and the window in bedroom 2 along the eastern elevation be changed to a highlight window with a minimum sill height of 1.5m.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The revised plans reflect a more desirable design solution in which the privacy and amenity for neighbouring properties, primarily 1 Delaigh Avenue, has been achieved and maintained. As discussed above, should this application be approved, a condition of consent would be recommended to ensure the windows along the eastern elevation have an amended sill height to minimise direct overlooking into the private open space of 164 Pitt Road.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposed development, should it be approved, will provide personal and property security for the occupants and visitors of the subject site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D9 Building Bulk

The requirement of a Secondary Dwelling is for additional and affordable housing to be *secondary* to the principal dwelling. One of the underlying objectives of this Clause is to minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes. The proposed development is likely to create an excessive built form and will

result in a dominant structure that is unlikely to appear as secondary to the principal dwelling when viewed from Pitt Road and Delaigh Avenue. As discussed under *B7 Front Building Setback* of this report, the dominant character of the streetscape is greater than the proposed 4.5m front setback. Therefore the proposed development will negatively impact upon the visual character of Delaigh Avenue. The proposed development is, therefore, inconsistent with the underlying objectives of this Clause. Amended plans were received by Council on 25 June 2019, and it is determined the proposed amendments remain inconsistent with this control. Therefore, Council cannot support this application.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION


THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/0292 for the Demolition works and construction of a garage and secondary dwelling on

land at Lot 50 DP 17125,166 Pitt Road, NORTH CURL CURL, for the reasons outlined as follows:

1. The proposed development is inconsistent with clause 1.2 (Aims of Plan) of Warringah Local Environmental Plan 2011 and clause A.5 (Objectives) of Warringah Development Control Plan 2011.
2. The proposed development is inconsistent with the character and pattern of development along Delaigh Avenue, inconsistent with the requirements and objectives of clause B7 (Front Boundary Setbacks) of Warringah Development Control Plan 2011.
3. The scale and visual impact of the proposed development has not been appropriately minimised, resulting in a development that overwhelms the primary dwelling, inconsistent with the character of Delaigh Avenue and the provisions of clause D9 (Building Bulk) of Warringah Development Control Plan 2011.

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

Signed



Megan Surtees, Planner

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



Rebecca Englund, Acting Development Assessment Manager