

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0932
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Responsible Officer:	Kent Bull
Land to be developed (Address):	Lot 867 DP 595584, 11 Farnell Street CURL CURL NSW 2096
Proposed Development:	Construction of 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
Owner:	Maria Quinn David Andrew Quinn
Applicant:	David Andrew Quinn

Application Lodged:	28/08/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	09/09/2019 to 23/09/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 9,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the construction of a secondary dwelling. In particular, the works include:

- Installation of a kitchen and a fire door internally;
- Conversion of a store room to a bedroom;
- Conversion of a rumpus room to a kitchen/living/dining room; and
- Construction of access stairs from the garage terrace to the garden bed to the east.

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 - 5.4 Controls relating to miscellaneous permissible uses
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 867 DP 595584 , 11 Farnell Street CURL CURL NSW 2096
Detailed Site Description:	<p>The subject site consists is known as 11 Farnell Street, Curl Curl and is legally referred to as Lot 867 DP 595584. The site consists of one (1) allotment located on the western side of Farnell Street.</p> <p>The site is irregular in shape with a frontage of 10.06m along Farnell Street and a depth of 48.25m. The site has a area of 505m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house with attached double garage towards the Farnell Street frontage and a pool, cabana and carport structures towards the rear of the site. Pedestrian and vehicle access is available from the Farnell Street and Gardere Avenue.</p> <p>The slope of the site falls from the west to the east, getting significantly steeper towards the Farnell Street frontage.</p> <p>The site consists of garden terrace area over the double garage towards the front of the site and vegetation including</p>

screen planting is established towards the rear of the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by low density residential dwellings within a landscaped setting.

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:

21 July 2015

Development Application No. DA2014/1321 for the Alterations and additions to an existing dwelling was determined by the granting of consent on 21 July 2015.

1 August 2016

Modification Application No. Mod2016/0017 for the modification of Development Consent DA2014/1321 was granted on 1 August 2016.

26 February 2019

Modification Application No. Mod2018/0245 for the modification of Development Consent DA2014/1321 was granted on 26 February 2019.

APPLICATION HISTORY

28 August 2019

Subject development application received by Council.

18 September 2019

Evidence provided to Council of the notification sign being in place on site.

24 September 2019

Site inspection undertaken by the Development Assessment Officer. Property Owner present.

2 October 2019

Phone and email correspondence from the Development Assessment Officer to the Applicant requesting that a BASIX Certificate be submitted.

10 October 2019

Letter sent by Council to the Applicant requesting the withdrawal of the application. The letter advised that the application could not be supported without a BASIX Certificate due to inconsistencies with the Environmental Planning and Assessment Regulation 2000 and Northern Beaches Council Development Application & Modification Lodgement Requirements 19/20.

15 October 2019

A BASIX Certificate is supplied and accepted by Council to address the above requirement.

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)(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&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&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 allow</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Council to request additional information. No additional information was requested in this case.</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. This clause is not relevant to this application.</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). This matter has been addressed via a condition of consent. / This clause is not relevant to this application.</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. This matter has been addressed via a condition of consent.</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). This matter has been addressed via a condition of consent.</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 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>
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	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would

Section 4.15 Matters for Consideration'	Comments
	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 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 John James Hopkins	9 A Gardere Avenue CURL CURL NSW 2096
Sally Jean Hopkins	9 A Gardere Avenue CURL CURL NSW 2096

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

- Floor Area of Secondary Dwelling
- Privacy concerns of bedroom window G3
- Off-street Parking
- Land and Environment Court Orders
- Location of stairs

The matters raised within the submissions are addressed as follows:

- Floor Area of Secondary Dwelling
Comment:
A submission was received from the property owners of 9 Farnell Street, raising concern with the floor area of the proposed secondary dwelling. In this regard, the proposal has demonstrated compliance with Clause 6.10 of the Warringah LEP 2011 for the total floor area of the secondary dwelling to not exceed 75m². As such, the proposal does not result in a numerical non-compliance and does not warrant refusal of this application subject to recommended conditions.
- Privacy concerns of bedroom window G3
Comment:
A submission was received from the property owners of 9 Farnell Street, raising concern with the privacy implications arising from bedroom window G3. This issue was raised within the previous modification (MOD2016/0017) and conditioned to either have a minimum sill height of

1.5m above the finished floor level, or be constructed with obscure glazing to a minimum height of 1.5m above the finished floor level. The site inspection undertaken during the assessment period demonstrates that this condition has been satisfied. It is acknowledged that while this window does incorporate louvre windows, that the window is considered to meet the objectives of Part D8 (Privacy) of the Warringah DCP. See Part D8 (Privacy) of the Warringah DCP for further discussion.

- Off-street Parking

Comment:

A submission was received from the property owners of 9 Farnell Street, raising concern with the availability of off-street parking at 11 Farnell Street. In this regard, the submitted plans demonstrate that 3 spaces are provided, therefore complying with Appendix 1 (Car Parking Requirements) of the Warringah DCP. Further, Council cannot refuse consent for a secondary dwelling to which the State Environmental Planning Policy (Affordable Rental Housing) 2009 applies on the ground of no additional parking being provided on site. As such, the proposal does not result in a numerical non-compliance and does not warrant refusal of this application subject to recommended conditions

- Land and Environment Court Orders

Comment:

A submission was received from the property owners of 9 Farnell Street, raising concern regarding breaches to current Land and Environment Court Orders. Council recognises that a number of court cases have occurred between the Quinn's and Hopkins since 2016. The works proposed by this Development Application have minimal impacts on adjoining and surrounding properties. Further, no works are proposed within the southern side setback adjoining 9A Farnell Street, Curl Curl. Given the above it is considered that the issue has been reviewed and does not warrant refusal of this application subject to recommended conditions.

- Location of Stairs

Comment:

A submission was received from the property owners of 9 Farnell Street, raising concern regarding the location of the proposed stairs/steps on submitted plans. The proposed stairs are located along the northern side setback and indicated on the submitted Garage Roof Terrace Plan (Drawing No. DA_03). Email correspondence between the Development Assessment Officer and the property owners of 9 Farnell Street further detailed how this plan could be accessed and reviewed.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application proposes to undertake alterations and additions to the existing residential dwelling to convert the building into a three plus storey building containing two separate dwellings (the new works consisting of an attached 'granny flat').</p> <p>These dwellings are to be located such that one dwelling is located atop and adjacent the other which requires specific Fire prevention measures and Sound Transmission measures under the requirements of the Building Code of Australia (BCA) as the structure changes from</p>

Internal Referral Body	Comments
	<p>a Class 1a building to a Class 2 under that Code.</p> <p>It has been identified that elements of the building design do not satisfy the BCA's Deemed to Satisfy (DTS) provisions and a report submitted with the application, has been developed to provide a solution that satisfies the relevant BCA performance requirements. This however only addresses the protection of openings issue.</p> <p>There is a requirement for a Fire Rate ceiling to separate the upper level of the building from the Granny Flat and BCA Part F Noise Transmission requirements. There is also a requirement for a separate occupancy to contain a Laundry.</p> <p>No objections subject to any Consent containing sufficient enforceable conditions to ensure the building complies and is fit for purpose.</p>
NECC (Bushland and Biodiversity)	<p>This application was assessed against Warringah DCP E2 Prescribed vegetation and E6 Retaining unique environmental features.</p> <p>The proposal is for the construction of a granny flat, which will be completely within the existing structures. There will be no impacts to native trees or vegetation.</p> <p>Council's Natural Environment - Biodiversity section supports the application.</p>
NECC (Coast and Catchments)	<p>The proposed development has been assessed to comply with clauses 13 and 15 of SEPP Coastal Management and is supported without condition. It is not likely to alter coastal processes to the detriment of the environment or other land and is not likely to reduce public amenity or existing access to and use of the foreshore.</p>
NECC (Development Engineering)	<p>No objections are raised to the proposed development, subject to conditions.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed under the Warringah DCP 2011 C4 Stormwater and the Water Management Policy, and the SEPP (Coastal Management) 2018 - Coastal Environment Zone.</p> <p>As the increase in impervious area is less than 50sqm, water quality controls do not apply.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>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.</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 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 use is defined under WLEP 2011 as:

"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."

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 (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential.	Consistent. 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.	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 proposed secondary dwelling is located on the same land as the principal dwelling.
(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 total floor area of the secondary dwelling is 74.4m ² . The requirement for internal secondary dwellings as per Clause 6.10 of the Warringah LEP 2011 is 75m ² .
(4) A consent authority must not refuse consent to development to which this Division applies on	The site has an area of 505m ² .

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.

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 above clauses of SEPP AHR. In this regard, the development is supported.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1051030S, dated 15 October 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	50

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:

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:

The proposed development is not likely to cause adverse impacts on the matters identified in this clause.

- (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:

The proposed development has been designed and sited avoid adverse impacts on the Coastal Environment Area.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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:

It has been considered that the proposed development will not likely cause increased risk of coastal hazards on the subject site or neighbouring land.

As such, it is considered that the application does 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?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Internal works only - Height as approved in DA2014/1321	N/A	N/A
Floor Area of Secondary Dwelling	75m ² (As per Clause 6.10 of the Warringah LEP 2011)	74.4m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.8 Conversion of fire alarms	Yes

Clause	Compliance with Requirements
6.4 Development on sloping land	Yes
6.10 Development for the purposes of secondary dwellings in Zones R2 and R3	Yes

Detailed Assessment

5.4 Controls relating to miscellaneous permissible uses

The total floor area of the proposed secondary dwelling is measured at 74.4m². Despite clause 5.4 (9), clause 6.10 (Development for the purposes of secondary dwellings in Zones R2 and R3) of the Warringah LEP 2011, indicates that development consent may be granted for development for the purposes of a secondary dwelling in an R2 Zone if the total floor area of the secondary dwelling does not exceed 75m² and if the consent authority is satisfied that the secondary dwelling will be located entirely within an existing principal dwelling that contains no other secondary dwelling. In this regard, the proposed secondary dwelling is considered to be acceptable, subject to compliance with the condition requiring the 'self closing fire door' indicated on drawing no. DA_04 (Ground Floor Plan) is to be removed and replaced with an internal wall.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	Built form as approved in DA2014/1321 and later modified	N/A	N/A
B3 Side Boundary Envelope	5m	Built form as approved in DA2014/1321 and later modified	N/A	N/A
	5m	Built form as approved in DA2014/1321 and later modified	N/A	N/A
B4 Site Coverage	N/A	Built form as approved in DA2014/1321 and later modified	N/A	N/A
B5 Side Boundary Setbacks	0.9m	Built form as approved in DA2014/1321 and later modified	N/A	N/A
	0.9m	Built form as approved in DA2014/1321 and later modified	N/A	N/A
B7 Front Boundary Setbacks	6.5m	Built form as approved in DA2014/1321 and later modified	N/A	N/A
B9 Rear Boundary Setbacks	6m	Built form as approved in DA2014/1321 and later modified	N/A	N/A

D1 Landscaped Open Space (LOS) and Bushland Setting	40%	Built form as approved in DA2014/1321 and later modified	N/A	N/A
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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
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	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
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
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D8 Privacy

Concerns were raised by the adjoining property owners at 9 Farnell Street, regarding the privacy impacts arising from the bedroom window G3 (Figure 1).

This particular privacy issue was raised in previous modifications, resulting in the window incorporating obscure glazing (as per condition Condition 15A of Mod2016/0017) to a height of 1.5m above the finished floor level. During the site inspection, it was identified that part of this window

incorporated louver windows, which, when open presents a degree of potential overlooking towards the staircase area of 9 Farnell Street (Figure 2). The requirements of the control state that the windows of one dwelling are to be located do not provide direct or close views into the windows of other dwellings, and to avoid overlooking that it is preferred that screening devices, high sills or obscured glass are incorporated. While privacy concerns have been acknowledged in this assessment, it is considered that the window arrangement has been positioned in such a way that it would not directly face the area of concern for occupants of 9 Farnell Street. It is also recognised that louvers improve ventilation and natural airflow into the bedroom room which would not occur if the window were to be fixed.

Based on the consideration above, the development is consistent with the objectives of the control and is supported on merit.



Figure 1: Bedroom Window G3 (Standing Level)



Figure 2: Close-up view of Bedroom Window G3 (Standing Level)

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.

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 DA2019/0932 for Construction of a secondary dwelling on land at Lot 867 DP 595584, 11 Farnell Street, CURL CURL, 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

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Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA_01, Issue A (Site/Roof Plan)	15 August 2019	Howard K Smith & Associates Pty Ltd
DA_03, Issue B (Garage Roof/Terrace Plan)	26 August 2019	Howard K Smith & Associates Pty Ltd
DA_04, Issue A (Ground Floor Plan)	15 August 2019	Howard K Smith & Associates Pty Ltd
DA_07, Issue A (East & West House Elevations)	15 August 2019	Howard K Smith & Associates Pty Ltd
DA_08, Issue A (North Elevation)	15 August 2019	Howard K Smith & Associates Pty Ltd
DA_09, Issue A (South Elevation Plan)	15 August 2019	Howard K Smith & Associates Pty Ltd
DA_11, Issue A (Longitudinal Section)	15 August 2019	Howard K Smith & Associates Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Fire Engineering Report, Ref. 0773 FEAS REV C - FINAL	13 September 2018	J2 Consulting Engineers Pty Ltd
BASIX Certificate, Ref. 1051030S	15 October 2019	Certified Energy

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. **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.

3. 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) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) 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.
- (j) 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.

- (k) 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.

FEES / CHARGES / CONTRIBUTIONS

4. **Security Bond**

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, details demonstrating payment are to be submitted to the Certifying Authority 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.

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

5. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- The 'self closing fire door' indicated on drawing no. DA_04 (Ground Floor Plan) is to be removed and replaced with an internal wall that is consistent with the relevant fire prevention measures detailed and recommended in the Building Code of Australia (BCA) and Fire Engineering Report Ref No. 0773 FEAS REV C – FINAL issued on 13/09/2018 by J Squared Engineering P/L.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

6. **Building Code of Australia - Sound Transmission requirements**

Sound Transmission requirements are to be installed / provided between occupancies so as to comply with Volume 1, Part F of the Building Code of Australia.

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

Reason: To comply with the National Construction Code and to ensure adequate provision is made for sound transmission minimisation in the premises for health/amenity compliance.

7. **Laundry Facilities**

A laundry area is to be provide within the secondary dwelling/ for the secondary dwelling, and is to be designed to incorporate facilities (including a washtub), in accordance with Part 3.8.3 of Volume 1 of the Building Code of Australia (BCA).

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

Reason: To ensure adequate provision is made for Health and Amenity in accordance with the minimum provisions of the BCA.

8. **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.

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.

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

10. **Fire Safety Upgrade**

1. Any required fire upgrading measures and works to upgrade the building as detailed and recommended in the BCA and Fire Engineering Report Ref No. 0773 FEAS REV C – FINAL issued on 13/09/2018 by J Squared Engineering P/L are to be constructed/provided/implemented to the building with details demonstrating implementation and compliance, being submitted to the Principal Certifying Authority prior to the issue of any Interim / Final Occupation Certificate.

2. Additionally, the secondary dwelling is to be fully fire separated from the main dwelling and evidence verifying compliance is to be provided to the Principal Certifying Authority prior to the issue of any Interim / Final Occupation Certificate.

Reason: To ensure adequate provision is made for fire safety, occupant safety, egress and access in the premises for building occupants.

11. **Sound Transmission requirements**

Sound Transmission requirements are to be installed / provided between occupancies so as to comply with Volume 1, Part F of the Building Code of Australia.

Details demonstrating implementation and compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim or final Occupation Certificate.

Reason: To comply with the National Construction Code and to ensure adequate provision is made for sound transmission minimisation in the premises for health/amenity compliance.

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 Fire and Rescue NSW.

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 Fire and Rescue NSW, 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



Kent Bull, Planner

The application is determined on 16/10/2019, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments