

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|                            |             |
|----------------------------|-------------|
| <b>Application Number:</b> | DA2018/1473 |
|----------------------------|-------------|

|                                           |                                                                  |
|-------------------------------------------|------------------------------------------------------------------|
| <b>Responsible Officer:</b>               | Kye Miles                                                        |
| <b>Land to be developed (Address):</b>    | Lot 44 DP 203070, 35 Ennerdale Crescent WHEELER HEIGHTS NSW 2097 |
| <b>Proposed Development:</b>              | Use of an outbuilding as a secondary dwelling                    |
| <b>Zoning:</b>                            | Warringah LEP2011 - Land zoned R2 Low Density Residential        |
| <b>Development Permissible:</b>           | Yes                                                              |
| <b>Existing Use Rights:</b>               | No                                                               |
| <b>Consent Authority:</b>                 | Northern Beaches Council                                         |
| <b>Land and Environment Court Action:</b> | No                                                               |
| <b>Owner:</b>                             | Stephen Christov<br>Deborah Claudia Christov                     |
| <b>Applicant:</b>                         | Deborah Claudia Christov                                         |

|                                  |                                         |
|----------------------------------|-----------------------------------------|
| <b>Application lodged:</b>       | 05/09/2018                              |
| <b>Integrated Development:</b>   | No                                      |
| <b>Designated Development:</b>   | No                                      |
| <b>State Reporting Category:</b> | Residential - Alterations and additions |
| <b>Notified:</b>                 | 11/09/2018 to 27/09/2018                |
| <b>Advertised:</b>               | Not Advertised                          |
| <b>Submissions Received:</b>     | 0                                       |
| <b>Recommendation:</b>           | Approval                                |

|                                 |              |
|---------------------------------|--------------|
| <b>Estimated Cost of Works:</b> | \$ 26,000.00 |
|---------------------------------|--------------|

### 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 - B5 Side Boundary Setbacks

Warringah Development Control Plan - B9 Rear Boundary Setbacks

## SITE DESCRIPTION

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot 44 DP 203070 , 35 Ennerdale Crescent WHEELER HEIGHTS NSW 2097                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Detailed Site Description:</b> | <p>The subject site consists of 1 allotment legally known as Lot 44 DP 203070 , 35 Ennerdale Crescent WHEELER HEIGHTS NSW 2097. It is located on the southern side of Ennerdale Crescent.</p> <p>The site is irregular in shape with a frontage of 14.02m along Ennerdale Crescent and a depth of 34.98m. The site has a surveyed area of 556.40m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two storey dwelling with a detached garage.</p> <p>The site is relatively steep and slopes from the rear boundary to the road.</p> <p>The site contains one large tree and light vegetation within the front setback. The rear setback area contains a lawn with small and medium shrubs along the boundaries.</p> <p>Adjoining and surrounding development is characterised by low density living.</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:

### DA2007/0451

This application was for the construction of a swimming pool and surrounding deck, it was approved on the 9th of October 2007.

### DA2016/1302

This application was for changing the use of an existing detached studio to a secondary dwelling. It was withdrawn due to unauthorised works and bushfire issues on the 6th of March 2017.

### BC2018/0057

This building certificate has been lodged in tandem with the proposal, to seek approval for unauthorised works, being the construction of a studio secondary dwelling.

## PROPOSED DEVELOPMENT IN DETAIL

This application is for changing the use of a existing detached studio to a secondary dwelling at No. 35 Ennerdale Crescent.

## 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 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&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;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&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) <b>Environmental Impact</b><br/>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) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>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 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

## 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 of the application Council received no submissions.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

| Internal Referral Body                             | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Building Assessment - Fire and Disability upgrades | <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p> |
| Environmental Compliance (Building Control)        | <p>"Council has a previous compliance investigation relating to unauthorised works to an outbuilding at the property- Reference EPA2016/0185. A subsequent Building Certificate application has been lodged for the unauthorised works and is currently under assessment - Reference BC2018/0057. The approval of both these application will assist in resolving this compliance matter for the works and use"</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 (Affordable Rental Housing) 2009

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

### Division 2: Secondary dwellings

#### Clause 19: Definition

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

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

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

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

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

#### Comment:

The proposed use is defined under WLEP 2011 as a secondary dwelling, which 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." .

#### 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:

|                                                                                                                                                                                                                               |                                                                                                                                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>(a) Zone R1 General Residential, or<br/> (b) Zone R2 Low Density Residential, or<br/> (c) Zone R3 Medium Density Residential, or<br/> (d) Zone R4 High Density Residential, or<br/> (e) Zone R5 Large Lot Residential.</p> | <p><b>Consistent.</b><br/> The site is located within the R2 low density residential zone and, as such, the proposed use is permissible with consent under WLEP 2011.</p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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. | <p><b>Consistent.</b><br/> The development involves changing the use of a detached studio to a secondary dwelling, as defined by the Standard Instrument. Therefore, this Division applies.</p> |

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 proposal will not be creating an additional dwelling other than the principal dwelling and secondary dwelling. |
| <p>(3) A consent authority must not consent to development to which this Division applies unless:</p> <p>(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</p> <p>(b) the total floor area of the secondary dwelling is no more than 60m<sup>2</sup> or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.</p> | The proposed floor area is below 60m <sup>2</sup> .                                                                |
| <p>(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:</p> <p>(a) site area if:</p> <p>(i) the secondary dwelling is located within, or is attached to, the principal dwelling, or</p> <p>(ii) the site area is at least 450 square metres.</p> <p>(b) parking if no additional parking is to be provided on the site.</p>                                                                                                                                                                                    | The subject site area is greater than 450 square metres.                                                           |

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

Clause 24: No subdivision

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

Conclusion

With regard to the above assessment, it is considered that the proposal is consistent with the requirements of State Environmental Planning Policy (Affordable Rental Housing) 2009 and is therefore supported by Council.

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

A BASIX certificate has been submitted with the application (see Certificate No. 949833S and 17 August 2018).

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

| Commitment             | Required Target | Proposed |
|------------------------|-----------------|----------|
| <b>Water</b>           | 40              | 41       |
| <b>Thermal Comfort</b> | Pass            | Pass     |
| <b>Energy</b>          | 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.

**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 | Complies |
|----------------------|-------------|----------|----------|
| Height of Buildings: | 8.5m        | 3.3m     | Yes      |

Compliance Assessment

| Clause                                                  | Compliance with Requirements |
|---------------------------------------------------------|------------------------------|
| 4.3 Height of buildings                                 | Yes                          |
| 4.6 Exceptions to development standards                 | Yes                          |
| 5.3 Development near zone boundaries                    | Yes                          |
| 5.4 Controls relating to miscellaneous permissible uses | Yes                          |
| 5.8 Conversion of fire alarms                           | 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        | 3.1m            | N/A          | Yes      |
| B3 Side Boundary Envelope  | 4m          | No encroachment | N/A          | Yes      |
|                            | 4m          | No encroachment | N/A          | Yes      |
| B5 Side Boundary Setbacks  | 0.9m - East | 0.43m           | 52.22%       | No       |
|                            | 0.9m - West | 11.10m          | N/A          | Yes      |
| B7 Front Boundary Setbacks | 6.5m        | 26.20m          | N/A          | Yes      |
| B9 Rear Boundary Setbacks  | 6m          | 2.27m           | 62.17%       | No       |

|                                                     |     |        |     |     |
|-----------------------------------------------------|-----|--------|-----|-----|
| D1 Landscaped Open Space (LOS) and Bushland Setting | 40% | 42.91% | N/A | Yes |
|-----------------------------------------------------|-----|--------|-----|-----|

#### Compliance Assessment

| Clause                                                                 | Compliance with Requirements | Consistency Aims/Objectives |
|------------------------------------------------------------------------|------------------------------|-----------------------------|
| A.5 Objectives                                                         | Yes                          | Yes                         |
| B1 Wall Heights                                                        | Yes                          | Yes                         |
| B3 Side Boundary Envelope                                              | Yes                          | Yes                         |
| B5 Side Boundary Setbacks                                              | No                           | Yes                         |
| B7 Front Boundary Setbacks                                             | Yes                          | Yes                         |
| B9 Rear Boundary Setbacks                                              | No                           | 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                         |
| D1 Landscaped Open Space and Bushland Setting                          | Yes                          | Yes                         |
| D2 Private Open Space                                                  | Yes                          | Yes                         |
| D3 Noise                                                               | Yes                          | Yes                         |
| D6 Access to Sunlight                                                  | Yes                          | Yes                         |
| D7 Views                                                               | Yes                          | Yes                         |
| D8 Privacy                                                             | Yes                          | Yes                         |
| D9 Building Bulk                                                       | Yes                          | Yes                         |
| D10 Building Colours and Materials                                     | Yes                          | Yes                         |
| D11 Roofs                                                              | Yes                          | Yes                         |
| D12 Glare and Reflection                                               | Yes                          | Yes                         |
| D14 Site Facilities                                                    | Yes                          | Yes                         |
| D20 Safety and Security                                                | Yes                          | Yes                         |
| D21 Provision and Location of Utility Services                         | Yes                          | Yes                         |
| 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

### **B5 Side Boundary Setbacks**

#### Description of non-compliance

The proposed minimum side setback is 0.43m.

The control require a minimum side setback of 0.90m.

#### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To provide opportunities for deep soil landscape areas.*

#### Comment:

The proposed landscaped open space setting is 42.91%. Therefore the ability to provide adequate deep soil landscapes will not be affected by the proposed change of use.

- *To ensure that development does not become visually dominant.*

#### Comment:

The proposed change of use will have no affect on existing buildings visual dominance.

- *To ensure that the scale and bulk of buildings is minimised.*

#### Comment:

The proposed change of use will not affect the bulk and scale of existing buildings on the subject site.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

#### Comment:

The proposed change of use will permit the existing detached studio to be used as a secondary dwelling, therefore allowing it to become a habitable space. Following the completion of a site inspection it was found that the proposed secondary dwelling contained one opaque window, overlooking the eastern boundary. In addition, the existing detached studio is well below the height limit. Overall the proposed use of a secondary dwelling will not unreasonably disrupt the level of privacy, amenity and solar access experienced by adjoining properties.

- *To provide reasonable sharing of views to and from public and private properties.*

#### Comment:

The proposal will not result in the loss of views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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.

## **B9 Rear Boundary Setbacks**

### Description of non-compliance

The proposed minimum side setback is 2.27m

The control require a minimum side setback of 6.0m.

### Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure opportunities for deep soil landscape areas are maintained.*

#### Comment:

The proposed landscaped open space setting is 42.91%. Therefore the ability to provide adequate deep soil landscapes will not be affected by the proposed change of use.

- *To create a sense of openness in rear yards.*

#### Comment:

The proposed change of use will not impact the subject site's sense of openness in the rear yard.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

#### Comment:

The proposed change of use will permit the existing detached studio to be used as a secondary dwelling, therefore allowing it to become a habitable space. Following the completion of a site inspection it was found that there were no windows that readily overlook the rear boundary. Therefore the proposed use of a secondary dwelling will reasonably preserve the amenity of adjacent land, particularly relating to privacy between buildings adjoining the rear boundary.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

#### Comment:

Secondary dwellings are commonly found within the rear setback areas of sites in low density residential zones. Therefore, the proposal will not disrupt the existing visual continuity and will reasonably maintain the pattern of buildings, rear gardens and landscape elements.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

The proposed change of use will create the existing detached studio secondary dwelling. There are no windows that readily overlook the rear boundary. Overall, it is considered that the proposed change of use will not create unreasonable privacy impacts for properties adjoining the rear boundary.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **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 Council Contributions Plan 2018**

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 DA2018/1473 for Use of an outbuilding as a secondary dwelling on land at Lot 44 DP 203070, 35 Ennerdale Crescent, WHEELER HEIGHTS, 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

| Architectural Plans - Endorsed with Council's stamp |            |                             |
|-----------------------------------------------------|------------|-----------------------------|
| Drawing No.                                         | Dated      | Prepared By                 |
| DRA002                                              | 25/10/2016 | Building Drafting Solutions |
| DRA004                                              | 25/10/2016 | Building Drafting Solutions |
| DRA005                                              | 25/10/2016 | Building Drafting Solutions |

| Engineering Plans |          |                            |
|-------------------|----------|----------------------------|
| Drawing No.       | Dated    | Prepared By                |
| S1 Rev B          | 12/07/17 | McKee & Associates Pty Ltd |

| Reports / Documentation – All recommendations and requirements contained within: |            |                          |
|----------------------------------------------------------------------------------|------------|--------------------------|
| Report No. / Page No. / Section No.                                              | Dated      | Prepared By              |
| Preliminary Geotechnical report                                                  | 13/11/2018 | White Geotechnical Group |
| Bushfire Hazard Assessment report                                                | 21/11/2016 | TFC The Fire Consultants |

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



c) The development is to be undertaken generally in accordance with the following:

| Landscape Plans |            |                             |
|-----------------|------------|-----------------------------|
| Drawing No.     | Dated      | Prepared By                 |
| DRA002          | 25/10/2016 | Building Drafting Solutions |

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. (DACPLB01)

## 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 (DACPLB09)

### 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. (DACPLB10)

## 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](http://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. Fire Separation - External Walls

The external walls of the proposed secondary dwelling where less than 900mm from an allotment boundary or less than 1.8m from another building on the same allotment other than an appurtenant Class 10 building or a detached part of the same Class 1 building shall have a FRL 60/60/60. Any openings within these walls are to be protected in accordance with Part 3.7 of the Building Code of Australia –'Fire Safety'.

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

Reason: To ensure adequate provision is made for fire safety and for building occupant safety

### 6. Laundry Facilities

The architectural plans are to be modified to incorporate a laundry comprising of clothes washing facilities, including at least one washtub and space in the same room for a washing machine in accordance with Part 3.8.3 of the Building Code of Australia –'Facilities'.

Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue

of the Construction Certificate.

Reason: To ensure adequate provision is made for building occupant health and amenity

**7. Compliance with Standards**

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

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

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

**8. Sewer / Water Quickcheck**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACPLC12)

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

**Signed**



**Kye Miles, Planner**

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



**Daniel Milliken, Acting Development Assessment Manager**